

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4123 75-4201

**United States Court of Appeals
For the Second Circuit**

No. 75-4123

IRWIN C. GUILD and BERNICE GUILD,
Appellants-Cross-Appellees,

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee-Cross-Appellant.

No. 75-4201

JONATHAN LOGAN, INC.,

Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellant.

JOINT APPENDIX ON CONSOLIDATED APPEALS

BRAUNER BARON ROSENZWEIG & KLIGLER, Esqs.
*Attorneys for Irwin C. Guild and
Bernice Guild, Appellants—Cross Appellees
(No. 75-4123)*

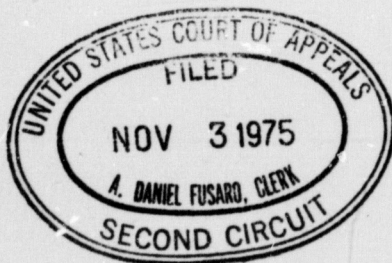
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(No. 75-4201)*

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SCOTT P. CRAMPTON, Esq.
*Assistant Attorney General
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Department of Justice
Washington, D.C. 20530*

*Attorney for Commissioner of
Internal Revenue
Appellee-Cross-Appellant (No. 75-4123);
Appellant (No. 75-4201)*



PAGINATION AS IN ORIGINAL COPY

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Notice of Appeal of Irwin C. Guild and
Bernice Guild (No. 75-4123)

1a

IRWIN C. GUILD and BERNICE GUILD

v.

COMMISSIONER OF INTERNAL REVENUE,


Respondent.

Docket No. 8284-72

Notice is hereby given that IRWIN C. GUILD and BERNICE GUILD hereby appeal to the United States Court of Appeals for the Second Circuit from the decision of this court entered in the above captioned proceeding on the 1st day of May, 1975.

Dated: June 9, 1975

Respectfully Submitted


Elias Rosenzweig
Counsel for Petitioners
120 Broadway
New York, New York 10005
(212) 732-5535

Notice of Appeal (Cross) of Commissioner of
Internal Revenue (No. 75-4123)

Notice of Appeal (Cross) of Commissioner of
Internal Revenue (No. 75-4123)
UNITED STATES TAX COURT

UNITED STATES
TAX COURT
FILED

IRWIN C. GUILD and
BERNICE GUILD,

1975 JUN 24 11 07

Petitioners-Appellants-Cross-Appellees,

v.

Docket No.
8284-72

COMMISSIONER OF INTERNAL REVENUE

Respondent-Appellee-Cross-Appellant,

NOTICE OF APPEAL

Notice is hereby given that the Commissioner of the Internal Revenue hereby appeals to the United States Court of Appeals for the Second Circuit from the decision of this Court entered in the above-captioned proceeding on the first day of May, 1975. Petitioners filed a notice of appeal in the above-captioned proceeding on June 11, 1975.

At the time the petition was filed with the Tax Court, petitioners were residents of New York whereby venue is established in the United States Court of Appeals for the Second Circuit.

SCOTT P. CRAMPTON
Assistant Attorney General
Department of Justice

(signed) Meade Whitaker
COJ

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

Notice of Appeal of Commissioner of Internal
Revenue (No. 75-4201)

Notice of Appeal of Commissioner of Internal
Revenue (No. 75-4201)

3a

UNITED STATES TAX COURT

UNITED STATES
TAX COURT
FILED

1975 JUL 23 PM 4 26

JONATHAN LEON, INC.

Petitioner-Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellant,

Docket No. 8213-72

NOTICE OF APPEAL

Notice is hereby given that the Commissioner of the Internal Revenue hereby appeals to the United States Court of Appeals for the Second Circuit from the decision of this Court entered in the above-captioned proceeding on the first day of May, 1975.

Scott P. Crampton
COJ

SCOTT P. CRAMPTON
Assistant Attorney General
Department of Justice

(Signed) Meade Whitaker
COJ

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

Stipulation of Venue (T.C. Docket No. 8218-72)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JONATHAN LOGAN, INC.,	:	
Petitioner-Appellee	:	
v.	:	T. C. Docket
	:	No. 8218-72
COMMISSIONER OF INTERNAL REVENUE,	:	
Respondent-Appellant	:	

STIPULATION OF VENUE

It is hereby stipulated by and between the parties, pursuant to Section 7482(b) of the Internal Revenue Code of 1954, that the decision of the Tax Court in this case may be reviewed by the United States Court of Appeals for the Second Circuit.


STEVEN D. GARDNER
Counsel for Jonathan Logan, Inc.

SCOTT P. CRAMPTON

SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division
Department of Justice
Washington, D.C. 20530
Counsel for Commissioner of Internal Revenue

Dated: July 28, 1975.

Stipulation for Consolidation of Cases on Appeal
and Order of Briefing

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

5a

IRWIN C. GUILD and BERNICE GUILD,)
)
Appellants-Cross-Appellees)
v.) No. 75-4123
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Appellee-Cross-Appellant)

JONATHAN LOGAN, INC.,)
)
Appellee)
v.) No. 75-4201
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Appellant)

STIPULATION FOR CONSOLIDATION OF
CASES ON APPEAL AND ORDER OF BRIEFING

It is hereby stipulated and agreed by and among the parties, through their respective counsel, and subject to the approval of the Court, that the above-entitled proceedings shall be consolidated for purposes of briefing, argument, and decision.

It is further stipulated, subject to the approval of the Court, that a single record appendix for both cases shall be prepared by the appellants in No. 75-4123 (Guild), and all parties to the consolidated cases shall be entitled to designate materials for inclusion in the record appendix as provided by Rule 30(b) of the Federal Rules of Appellate Procedure.

It is further stipulated that the order of briefing shall be as follows, subject to the approval of the Court and further subject to such extensions of time as may be granted to any party by order of the Court:

6a

(1) The taxpayers in Guild shall file their opening brief as appellants and the record appendix on or before November 3, 1975;

(2) Within thirty days after the receipt of the appellants' brief in Guild, the Commissioner shall file a single brief as appellee and cross-appellant in Guild and as appellant in No. 75-4201 (Logan);

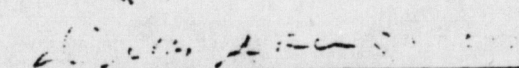
(3) Within thirty days after receipt of the Commissioner's brief described above, the taxpayer in Logan shall file a single brief as appellee in that case, and, if it so desires, responding to the taxpayers' arguments in Guild;

(4) Within thirty days after receipt of the taxpayer's brief in Logan described in (3) above, the taxpayers in Guild may file a single reply brief as appellants and answering brief as cross-appellees in Guild, and, if they so desire, responding to the arguments made by taxpayer in Logan;

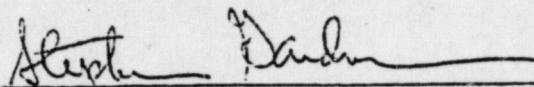
(5) Within fourteen days after receipt of the taxpayers' brief in Guild described in (4) above, the Commissioner may file a single reply brief as cross-appellant in Guild and appellant in Logan.

It is further stipulated, subject to the approval of the Court, that oral argument will be opened by counsel for Guild, followed by counsel for the Commissioner, and then by counsel for Logan. Counsel for Guild may reserve a portion of his time for rebuttal.

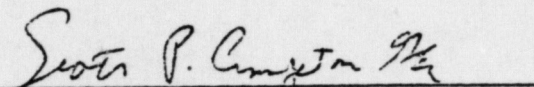
Dated: 10/17/75


ELIAS ROSENZWEIG
Counsel for Irwin C. Guild
and Bernice Guild

- 3 -

Dated: Oct. 6, 1975

STEPHEN D. GARDNER
Counsel for Jonathan Logan, Inc.

Dated: SEP 23 1975

SCOTT P. CRAMPTON
Assistant Attorney General
Counsel for the Commissioner
of Internal Revenue

So ordered


CHIEF JUDGE

Tax Court Docket No. 8284-72 (Irwin C. Guild and Bernice Guild)

UNITED STATES TAX COURT

GENERAL DOCKET

8a

DOCKET NO. 8284-72

<p>GUILD IRWIN C. / AND BERNICE GUILD 139 East 33rd. St. New York, N. Y. 10016 PETITIONER.</p>	ROSENZWEIG	<p>APPEARANCES FOR PETITIONER: Elias Rosenzweig (LEVITT, BRAUNER, BARON, & KLIGLER) 120 Broadway, New York, N. Y. 10005</p> <p>NAME _____</p> <p>ADDRESS _____</p>
VS.		
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.		

Date Month Day Year	Filings and Proceedings	Action	Served
Nov. 6, 1972	PETITION FILED: FEE PAID Nov. 6, 1972		Nov. 8, 1972
Nov. 6, 1972	REQUEST by Petrs. for trial at New York, N. Y.	GRANTED Nov. 8, 1972	Nov. 8, 1972
Dec. 15, 1972	ANSWER filed by Resp		Dec. 18, 1972
Dec. 15, 1972	REQUEST by Resp for trial NY, NY (Newark Session)	GRANTED Dec. 18, 1972	Dec. 18, 1972
Jun 29, 1973	NOTICE OF TRIAL on Oct. 9, 1973 at New York, N.Y.		June 29, 1973
Aug. 1, 1973	MOTION by Petr.(Rosenzweig) for continuance from Oct. 9, 1973 at N. Y., N. Y. to (a) Nov. 5, 1973 at N. Y., N. Y., or (b) Nov. 5, 1973 at Newark, N.J. (No Obj. Resp.) (No Obj. Gardner in 8218-72)	See Order Dtd. Aug. 3, 1973	
August 3, 1973	ORDER, that petrs. motion filed August 1, 1973 is granted and case is stricken from trial calendar at New York, on Oct. 9, 1973, New York/and continued for trial on Nov. 5, 1973 at Newark, New Jersey.		AUG 7 1973
Nov. 5, 1973	TRIAL at Newark Session before Judge Wiles		
	Record held open for 30 days for filing an Agreement by Resp.; Resp. Oral Motion is consolidate cases for trial - GRANTED. (8218-72 8284-72)		
	Petr. Stip of facts with Joint Exhibits, Trial Memorandum (Petr. served on Resp) Resp. Trial Memorandum (Resp. served on Petr); Petr Pre-Trial Memorandum on		

Continued to Page 2

Form No. 34
May 1970

DOCKET NO. _____

(Continuation)

IRWIN C. GUILD AND BERNICE GUILD			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Minutes. of Nov. 5, 16 1973, Cont.	Behalf of Petitioners (petr. served Resp.)			
	ORIGINAL BRIEFS: Jan 15, 1974			
	REPLY BRIEFS: Feb. 14, 1974			
	SUBMITTED: JUDGE WILES			
Dec. 3, 1973	16, TRANSCRIPT of Nov. 5, 1973 rec'd. (2) vols.			
Dec. 11, 1973	SUPPLEMENTAL STIPULATION OF FACTS filed.			
Jan. 10, 1974	MOTION by Resp. for extension of time to January 29, 1974 and March 15, 1974 within which to file Briefs. (No Obj. Parties)	GRANTED Jan 14, 1974	JAN 15 1974	
Jan. 29, 1974	BRIEF for Respondent filed.		JAN 31 1974	
Jan. 30, 1974	BRIEF for Petr. (Timely postmarked) C/S 1/29/74		JAN 31 1974	
Mar. 15, 1974	REPLY BRIEF for Resp filed.		MAR 19 1974	
Mar. 18, 1974	REPLY BRIEF for Petr (C/S. to Resp and Stephen D. Gardner, counsel for Petr. on Mar. 15, 1974)		MAR 19 1974	
Sept. 16, 1974	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Wiles.		SEP 16 1974	
	Decision will be entered under Rule 155.			
Feb. 19, 1975	MOTION by Petr. for reconsideration of Opinion. (OK to file per Judge)	DENIED Feb. 25, 1975	FEB 26 1975	
Mar. 6, 1975	RESPONDENT'S COMPUTATION filed.		MAR 10 1975	
Mar. 10, 1975	NOTICE of filing Resp's. Computation on Mar. 6, 1975 and Hearing on April 9, 1975 at Wash., D.C. (Objection due 5 days prior to hearing.)		MAR 10 1975	
April 7, 1975	NOTICE OF OBJECTION by Petr. to Resp's. Computation, filed. (C/S 4/2/75)		APR 7 1975	
April 7, 1975	PETITIONER'S COMPUTATION filed.		APR 7 1975	
	(Continued to page 3)			

UNITED STATES TAX COURT

GENERAL DOCKET

10a

DOCKET NO. 8284-72

(Continuation)

GUILD IRWIN C. / AND BERNICE GUILD			PETITIONER	PAGE 3
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Apr. 9, 1975	HEARING, at Washington, DC before Judge Wiles.			
	Hearing under Rule 155. - Held.			
Apr. 11, 1975	TRANSCRIPT of Apr. 9, 1975 received. (2 Volumes).			
Apr. 4, 1975	MOTION by Resp. to vacate Decision in Dkt. 8218-72 and	GRANTED Apr. 8, 1975	APR 21 1975	
	for entry thereof together with this Docket Number.	See Order Dtd. Apr. 16, 1975		
Apr. 16, 1975	ORDER, that Motion filed Apr. 4, 1975 is granted and		APR 21 1975	
	Decision in Dkt. No. 8218-72 is vacated and set aside			
	as of April 8, 1975.			
May 1, 1975	DECISION ENTERED, Judge Wiles.		May 1, 1975	
	APPELLATE PROCEEDINGS			
May 14, 1975	MOTION to fix amount of bond filed by Petrs.		May 15, 1975	
May 14, 1975	ORDER fixing the amount of bond at \$218,470.01.		May 15, 1975	
June 11, 1975	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		June 11, 1975	
June 11, 1975	NOTICE of Filing with copy of notice of appeal sent to			
	Mr. Meade Whitaker, Chief Counsel.		June 11, 1975	
June 11, 1975	NOTICE, to parties, of assembling and date for trans-			
	mission of the record.		June 11, 1975	
June 24, 1975	NOTICE OF CROSS-APPEAL to U.S.C.A., 2nd Circuit, filed			
	by Respondent.		June 25, 1975	
June 25, 1975	NOTICE of Filing with copy of notice of appeal mailed			
	to Mr. Elias Rosenzweig, counsel for Petitioners.		June 25, 1975	
June 25, 1975	NOTICE, to parties, of assembling and date for trans-			
	mission of the record.		June 25, 1975	
	(Continued to page 4)			

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(Continuation)

GULL

PETITIONER

PAGE 4

Filings and Proceedings

Action

Served

MOTION to extend time for transmission of record to

September 9, 1975, filed by Resp.

GRANTED

July 9, 1975

July 9, 1975

NOTICE, to parties, of assembling and extension of date

for transmission of record.

July 9, 1975

Tax Court Docket (No. 8218-72) Jonathan Logan, Inc.

UNITED STATES TAX COURT

GENERAL DOCKET

120

8218-72

DOCKET NO. _____

JONATHAN LOGAN, INC.
 (Bernard Wulkan, Vice Pres.)
 901 Liberty Avenue
 North Bergen, New Jersey 07047

Hellman

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

James S. Eustice; Stephen D. Gardner;
 (Kronish, Lieb, Shainswit, Weiner &
 NAME 1345 Avenue of the Americas, New York,
 ADDRESS N. Y. 10019

Date Month Day Year	Filings and Proceedings	Action	Served
Nov. 3, 1972	PETITION FILED: FEE PAID Nov. 3, 1972		Nov. 6, 1972
Nov. 3, 1972	REQUEST by petr. for trial at New York, N.Y.	GRANTED Nov. 6, 1972	Nov. 6, 1972
Dec. 15, 1972	ANSWER filed by Resp.		Dec. 18, 1972
Dec. 21, 1972	REQUEST by Resp. for trial at New York, N.Y. (Newark Session)	GRANTED Jan. 11, 1973	Jan. 11, 1973
Jun 29, 1973	NOTICE OF TRIAL on Oct. 9, 1973 at New York, N.Y. (Rosenzweig-8284-72)		Jun 29, 1973
Aug. 1, 1973	MOTION by Petr./for continuance from Oct. 9, 1973 at New York, N. Y. to (a) Nov. 5, 1973 at N. Y., N. Y., or (b) Nov. 5, 1973 at Newark, N. J.. (No Obj. Resp.) (No Obj. S. D. Gardner)	See Order Dtd. Aug. 3, 1973	
August 3, 1973	ORDER, that petr's. motion filed Aug. 1, 1973 is granted and case is stricken from trial calendar at New York, New York on Oct. 9, 1973 and continued for trial on Nov. 5, 1973 at Newark, New Jersey.		AUG 7 1973
Nov. 5, 1973	TRIAL at Newark Session before Judge Wiles Record Held open for 30 days for filing an Agreement by Resp.; Resp. Oral motion to consolidate cases for trial Granted. (8218-72 8284-72) Stip of facts with Joint Exhibits, Trial Memorandum (Petr. served on Resp) Resp. Trial Memorandum (Resp.		

(Continuation)

JONATHAN LOGAN, INC.		PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served
Month Day Year			
Minutes cont'd. 1/5, 16/73	served on Petr); Petr Pre-Trial Memorandum on Behalf of Petitioners (petr. served Resp.)		
	ORIGINAL BRIEFS: Jan 15, 1974 REPLY BRIEFS Feb. 11, 1974		
	SUBMITTED: JUDGE WILES		
Dec. 3, 1973	TRANSCRIPT of Nov. 16, 1973 rec'd. (2) vols.		
Dec. 11, 1973	SUPPLEMENTAL STIPULATION OF FACTS filed.		
Jan. 10, 1974	MOTION by Resp. for extension of time to January 29, 1974 and March 15, 1974 within which to file Briefs. (No Obj. Parties)	GRANTED Jan 14, 1974	JAN 15 1974
Jan. 29, 1974	BRIEF for Respondent filed.		JAN 31 1974
Jan. 30, 1974	BRIEF for Petr. (Timely Postmarked)		JAN 31 1974
Mar. 15, 1974	REPLY BRIEF for Resp. filed.		MAR 19 1974
Mar. 18, 1974	REPLY BRIEF for Petr. filed. (T.P.)		MAR 19 1974
Sept. 16, 1974	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Wiles.		SEP 16 1974
	Decision will be entered under Rule 155.		
Feb. 19, 1975	Dkt. 8284-72 MOTION by Petr./for reconsideration of Opinion. (OK to file per Judge)	DENIED Feb. 25, 1975	FEB 26 1975
Mar. 6, 1975	AGREED COMPUTATION filed.		
Mar. 14, 1975	DECISION ENTERED, Judge Wiles.	Vacated & Set Aside 4/8/75	Mar. 14, 1975
April 4, 1975	MOTION by Resp. to Vacate Decision and for Entry Thereof together with Dkt. No. 8284-72. (No Obj. Petr.	GRANTED Apr. 8, 1975 See Order Dtd. Apr. 16, 1975	APR 21 1975
Apr. 16, 1975	ORDER, that Motion filed Apr. 4, 1975 is granted and Decision in Dkt. No. 8218-72 is vacated and set aside as of April 8, 1975.		Apr. 21, 1975
May 1, 1975	DECISION ENTERED, Judge Wiles.		May 1, 1975
	APPELLATE PROCEEDINGS		
	(CONTINUED TO PAGE 3)		

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 8218-72

(Continuation)

JONATHAN LOGAN, INC.,			PETITIONER	PAGE 3
Date	Filings and Proceedings		Action	Served
Month Day Year				
June 16, 1975	NOTICE OF APPEAL to U.S.C.A., Third Circuit, filed by		Resp.	June 17, 1975
June 17, 1975	NOTICE of Filing with copy of notice of appeal mailed			
	to Messrs. James S. Eustice and Stephen D. Gardner,			
	counsel for Petr.			June 17, 1975
June 17, 1975	NOTICE, to parties, of assembling and date for trans-			
	mission of the record.			June 17, 1975
July 10, 1975	MOTION to extend time for transmission of record to			
	September 14, 1975, filed by Resp.		GRANTED July 11, 1975	July 11, 1975
July 11, 1975	NOTICE, to parties, of assembling and extension of date			
	for transmission of record.			July 11, 1975
July 23, 1975	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Resp.			July 24, 1975
July 24, 1975	NOTICE of Filing with copy of Notice of Appeal mailed			
	to Mr. James S. Eustice, counsel for Petitioner.			July 24, 1975
July 24, 1975	NOTICE, to parties, of assembling and date for trans-			
	mission of the record.			July 24, 1975
Aug. 1, 1975	STIPULATION of Venue to the 2nd Cir., filed.			
Aug. 13, 1975	MOTION by Respondent for extension of time for trans-			
	mission of the record to September 9, 1975.		GRANTED Aug. 13, 1975	Aug. 14, 1975
Aug. 14, 1975	NOTICE, to parties, of assembling and extension of			
	date for transmission of the record.			Aug. 14, 1975
Aug. 13, 1975	MOTION to dismiss Notice of Appeal to 3rd Cir., filed			
	by Respondent.			Aug. 14, 1975
Aug. 14, 1975	ORDER of Tax Court dismissing the Notice of appeal			
	pursuant to motion entered.			Aug. 14, 1975

Index to Record (T.C. Nos. 8218-72. 8284-72)

JONATHAN LOGAN, INC.,
 IRWIN C. GULLD AND BERNICE GULLD,
 Petitioners
 vs.
 COMMISSIONER OF INTERNAL REVENUE,
 Respondent

Tax Court Docket Nos. 8218-72, 8284-72

	Document No.
Docket entries #8218-72	1
Docket entries #8284-72	2
Petition #8218-72	3
Request by petitioners for place of trial - Granted	4
Answer	5
Request by respondent for place of trial - Granted	6
Petition #8284-72	7
Request by petitioner for place of trial - Granted	8
Answer	9
Request by respondent for place of trial - Granted	10
Notice setting cases for trial 10/9/73	11
Motion by petitioners for continuance	12
Order dated 8/3/73	13
Minutes of proceedings before the Tax Court 11/5, 16/73	14
Stipulation of facts	15
Transcript of proceedings before the Tax Court 11/5/73	16
Transcript of proceedings before the Tax Court 11/16/73	17
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Motion by respondent for extension of time to file briefs - Granted	19
Memorandum findings of fact and opinion	20
Motion by petitioners for reconsideration of opinion - Denied..	21
Respondent's computation for entry of decision #8284-72	22
Notice of filing and hearing of computation	23
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 Jonathan Logan, Inc., et al
 vs. Commissioner of Internal Revenue
 Docket Nos. 8218-72, 8284-72
 Page 2

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Decision #8218-72	25
Motion by respondent to vacate decision and for entry thereof together with docket no. 8284-72 - Granted	26
Notice of objection by petitioners to respondent's computa- tion #8284-72	27
Petitioners' computation for entry of decision	28
Minutes of proceedings before the Tax Court 4/9/75	29
Transcript of proceedings before the Tax Court 4/9/75	30
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Notice of cross appeal by respondent #8284-72	40
Notice of filing notice of appeal	41
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Notice of appeal by respondent #8218-72	45
Notice of filing notice of appeal	46
Notice of assembling and date for transmission of record	47

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 Jonathan Logan, Inc.,
 vs. Commissioner of Internal Revenue
 Docket Nos. 8218-72, 8284-72
 Page 3

	Document No.
Stipulation of venue #8218-72	48
Motion by respondent to extend time for transmission of record - Granted #8218-72	49
Notice of assembling and extension of date for transmission of record	50

The following exhibits are separately certified:
 1-A thru 13-M attached to stipulation of facts;
 Petitioners' 14, 15, 16 admitted in evidence.

Petition to Tax Court (No. 8284-72)

UNITED STATES TAX COURT

-----X

IRWIN C. GUILD AND BERNICE GUILD,
Petitioners,

Docket No. 12711-2

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

-----X

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (bearing symbols Ap:Nwk:HGE:MRD-90D) dated August 10, 1972, and, as a basis of this case, allege as follows:

1. The petitioners are husband and wife and reside in New York, New York. A joint return for the taxable year ended December 31, 1967, the period here involved, was filed with the District Director of Internal Revenue for the District of Manhattan, New York, New York.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioners on August 10, 1972.

3. The deficiencies as determined by the Commissioner is in income taxes for the calendar year 1967 in the amount of \$161,458.79 of which \$161,068.32 is in dispute.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that the petitioner, Irwin C. Guild (hereinafter "Guild") realized ordinary income in the amount of \$253,760. upon his exercise in 1967 of his option under the Jonathan Logan, Inc. Restricted Stock Option Plan to purchase 6,500 shares of Jonathan Logan, Inc. common stock having a fair market value of \$354,250, for a total exercise price of \$100,490.

(b) The Commissioner erred in determining that petitioner Guild realized ordinary income upon receipt of 6500 shares of Jonathan Logan, Inc. common stock under its Restricted Stock Option Plan pursuant to the terms of settlement of a court action brought by Guild against Jonathan Logan, Inc.

(c) Assuming arguendo that the taxpayers realized taxable income on the exercise by Guild of his restricted stock option, the Commissioner erred in determining that such income was ordinary income rather than long term capital gain income.

(d) The Commissioner erred in not allowing the taxpayers a deduction for the legal fees they incurred in connection with the exercise of Guild's Restricted

Stock Option.

5. The facts upon which the petitioners rely as the basis of this case are as follows:

(a) One of the petitioners, Irwin C. Guild, exercised his restricted stock option to acquire 6500 shares of Jonathan Logan, Inc. common stock within three months of the date on which he ceased to be an employee of Jonathan Logan, Inc. and thus realized no income upon such exercise under the provisions of Sections 424 and 421 (a) (1) of the Internal Revenue Code of 1954.

(b) Guild's right to exercise and his exercise of his option as to 6500 shares of Jonathan Logan, Inc. common stock were agreed to and recognized by Jonathan Logan, Inc. as the exercise of Guild's option under its Restricted Stock Option Plan. Such agreement and recognition by Jonathan Logan, Inc. were pursuant to the terms of settlement of an action brought by Guild against Jonathan Logan, Inc. to enforce his rights under its Restricted Stock Option Plan. The tax consequences which arise from the settlement of Guild's action against Jonathan Logan, Inc. must be governed by the nature of that claim.

(c) In the hands of Irwin C. Guild the right to receive 6500 shares of Jonathan Logan, Inc. common stock under the Jonathan Logan, Inc. Stock Option Plan was a capital asset which he had held for longer

than six months so that upon his receipt of said stock in exchange for such right Guild realized a long term capital gain in the amount of \$253,760 rather than ordinary income of that amount.

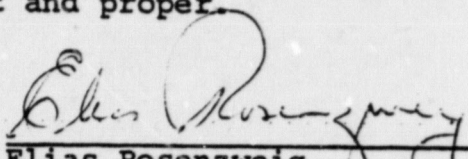
(d) In 1967, Irwin C. Guild delivered 388 shares of Jonathan Logan, Inc. common stock having a value of \$22,116 to the law firm of Epstein and Furman, 261 Madison Avenue, New York, New York 10016 (for which he received \$5,998.48) in payment for their legal services in connection with Guild's suit against Jonathan Logan, Inc. to enforce his rights under its Restricted Stock Option Plan. If it is determined that Guild must report as income in 1967 the difference between the fair market value of such stock and its exercise price, Guild is entitled, under Section 212 (1) of the Internal Revenue Code of 1954, to an itemized deduction equal to the excess of the fair market value of the stock (\$57.00 per share) over the amount he realized from its transfer (\$15.46 per share) namely \$16,117.52.

WHEREFORE, the petitioners pray that this Court may hear the proceeding and:

1. Determine that the Commissioner erred as alleged in the assignment of errors set forth in Paragraph 4 hereinabove.

2. Find that there is no deficiency in income tax for the calendar year 1967, and

3. Give such other and further relief as in the premises the Court may deem fit and proper.


 Elias Rosenzweig
 Attorney for Petitioners

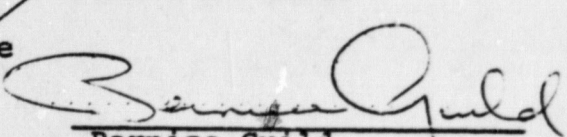
Levitt Brauner Baron
 Rosenzweig & Kligler
 120 Broadway
 New York, New York 10005

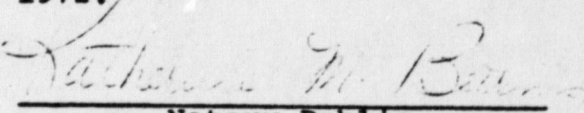
STATE OF NEW YORK)
 SS:
 COUNTY OF NEW YORK)

Irwin C. Guild and Bernice Guild being each duly sworn, say that they are the petitioners above named; that they have read the foregoing petition and are familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be on information and belief as to which they believe them to be true.


 Irwin C. Guild

Subscribed and Sworn to before
 me this 3rd day of November,
 1972.


 Bernice Guild


 Notary Public

Department of the Treasury

23a

Regional Commissioner
Internal Revenue Service
Mid-Atlantic Region

Date:

AUG 10 1972

In reply refer to:

Ap:Nwk:HGE:MRD-90D



Mr. Irwin C. Guild and
Mrs. Bernice Guild
139 East 33rd Street
New York, New York 10016

Dear Mr. & Mrs. Guild:

Tax Year Ended	Deficiency
December 31, 1967	\$161,458.79

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,
Johnnie M. Walters
Commissioner
By (SIGNED) JOSEPH LEVINE
Chief, Appellate Branch Office

Enclosures:
Waiver Form 870
Statement
Envelope

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
STATUTORY NOTICE STATEMENT

240

Ap: Nwk: HGE: MRD-9

Mr. Irwin G. Guild and
Mrs. Bernice Guild
139 East 33rd Street
New York, New York 10016

KIND OF TAX

Income Tax

TAXABLE YEAR ENDED

DEFICIENCY

December 31, 1967

\$161,458.79

☒ Copy to Authorized Representative:

Mr. Elias Rosenzweig
120 Broadway
New York, New York 10005

INDIVIDUAL INCOME TAX

STATEMENT SCHEDULE

1

25a

NAME Irwin C. Guild and Bernice Guild		TAXABLE YEARS ENDED December 31, 1967	
TAXABLE INCOME OR ADJUSTED GROSS INCOME AS SHOWN IN: <input checked="" type="checkbox"/> RETURN AS FILED <input type="checkbox"/> PRELIMINARY LETTER DATED <input type="checkbox"/> STATUTORY NOTICE DATED		\$ 91,889.57	
INCREASES (DECREASES) IN INCOME: (See attached explanation of items) (a) Adjustments to income (b) Other income		1,084.64 253,760.00	
TAXABLE INCOME AS REVISED IN AND DECREASES IN TAXABLE INCOME		\$346,734.21	
TAX COMPUTATION	TAX - Alternative - Schedule 2	\$200,677.53	
	TAX SURCHARGE		
	TAX PLUS SURCHARGE		
	LESS: TAX CREDITS		
	SUBTOTAL		
	ADD:		
	SELF-EMPLOYMENT TAX		
	TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT		
	TAX LIABILITY	\$200,677.53	
	LIABILITY PREVIOUSLY ASSESSED	39,218.74	
DEFICIENCY (Overassessment)	\$161,458.79		

NAME OF TAXPAYER

Irwin C. Guild and
Bernice Guild

YEAR/PERIOD ENDED

December 31,
1967

(a) The deduction of \$7,460.99 you claimed for employee business expense is not allowable in full, because it has not been established that any amount over \$6,376.35 represents an ordinary and necessary business expense or was expended for the purpose designated. Accordingly, your taxable income is increased \$1,084.64.

(b) It is determined that you realized ordinary taxable income of \$253,760 which was not reported on your income tax return. The amount of \$253,760 represents the difference between the fair market value of 6,500 shares of Corporate Stock of Jonathan Logan, Inc. (354,250) and the amount you paid for said shares (\$100,490).

INDIVIDUAL ALTERNATIVE TAX COMPUTATION

2

270

NAME	TAXABLE YEARS		
	1967		
Irwin C. Guild and Bernice Guild			
TAXABLE INCOME AS REVISED, SCHEDULE 1	\$ 346,734.21	\$	\$
LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAINS OVER NET SHORT-TERM CAPITAL LOSS	65,132.10		
ORDINARY INCOME	\$ 281,602.11	\$	\$
PARTIAL TAX	\$ 168,101.48	\$	\$
ADD: 25% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS	32,566.05		
INCOME TAX, ALTERNATIVE METHOD	\$ 200,667.53	\$	\$
INCOME TAX, REGULAR METHOD	\$ 213,693.95	\$	\$

Answer of Comm. of Internal Revenue (T.C. No. 8284-72)

FILED

1972 DEC 15 PM 3 42

UNITED STATES TAX COURT
 UNITED STATES
 TAX COURT

IRWIN C. GUILD AND BERNICE GUILD,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 8284-72

A N S W E R

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits the allegations of paragraph 1. of the petition.
2. Admits the allegations of paragraph 2. of the petition.
3. Admits that the deficiency in income tax determined by the respondent for the taxable year 1967 is in the amount of \$161,458.79. Denies the remaining allegations set forth in paragraph 3. of the petition.
4. (a) through (d) Denies the allegations set forth in subparagraphs (a) through (d) of paragraph 4. of the petition.
5. (a) through (c) Denies the allegations set forth in subparagraphs (a) through (c) of paragraph 5. of the petition.
- (d) Denies the allegations of the first sentence of subparagraph (d) of paragraph 5. of the petition for lack of information sufficient to form a belief with respect thereto. Denies the remaining allegations set forth in subparagraph (d) of paragraph 5. of the petition.

I SERVED DEC

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

(Signed) Lee H. Henkel, Jr.
JHH

LEE H. HENKEL, JR.,
Chief Counsel
Internal Revenue Service

OF COUNSEL:

EMORY L. LANGDON
Regional Counsel
GEORGE J. MENDELSON
Attorney
Internal Revenue Service

970 Broad Street - Room 904
Newark, New Jersey

Petition to Tax Court (T.C. No. 8218-72)

UNITED STATES TAX COURT

JONATHAN LOGAN, INC.,)	
Petitioner,)	
v.)	Docket No. 7218-72
COMMISSIONER OF INTERNAL REVENUE,)	
Respondent)	

PETITION

The above-named petitioner, by its attorneys, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency for the taxable year ending December 31, 1967 (Form L-21 AD, Rev. 9-71), bearing symbols Ap:Nwk:HGE:MRD:90-D, dated August 10, 1972, and pursuant to Section 6512(b) a refund of certain overpayments made by the petitioner. As a basis of this case, petitioner alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of Delaware. Its principal place of business is 3901 Liberty Avenue, North Bergen, New Jersey, 07047. The return for the taxable year in issue was filed with the District Director of Internal Revenue for the District of Newark at Newark, New Jersey.

2. The notice of deficiency was mailed to petitioner on August 10, 1972. A copy of that notice of deficiency is

attached hereto and is marked "Exhibit A".

3. The Commissioner has determined a deficiency in income tax for the calendar year 1967 in the amount of \$230,994.78, all of which is in dispute.

4. The determination of the tax deficiency set forth in the notice of deficiency is based upon the following errors:

(a)(1) The Commissioner erred in determining that petitioner was not entitled to a deduction under Section 162(a) or Section 165 in the amount of \$253,760.00 upon the issuance of 6,500 shares of petitioner's common stock to Mr. Irwin C. Guild ("Mr. Guild") on or about November 20, 1967 in settlement of his claims attributable to a contract of employment with petitioner on the ground that the common stock was transferred to Mr. Guild pursuant to the exercise of a restricted stock option.

(a)(2) In the alternative, the Commissioner erred in determining that the petitioner was not allowed a deduction under Section 162(a) or Section 165 in the amount of \$58,560.00 upon the issuance of 1,500 shares of petitioner's common stock in settlement of Mr. Guild's claims attributable to a contract of employment with petitioner.

(a)(3) In the alternative, the Commissioner erred in determining that the petitioner was not allowed a deduction under Section 162(a) or Section 165 in the amount of \$44,232.32 upon the issuance of 1,133 shares of petitioner's common stock in settlement of Mr. Guild's claims attributable to a contract

of employment with petitioner.

(a)(4) In the alternative, the Commissioner erred in determining that the petitioner was not allowed a deduction under Section 421(b) in the amount of \$15,147.52 upon the issuance of 388 shares of petitioner's common stock in settlement of Mr. Guild's claims attributable to a contract of employment with petitioner which were issued in the name of Mr. Irwin C. Guild and transferred by him to third parties within six months of his receipt of those shares, and therefore, constituted a disqualifying disposition pursuant to Section 424(a)(1).

(b) The Commissioner erred in determining that petitioner realized a gain in the amount of \$341,300.00 upon the exercise of a forward currency contract since such income was attributable to petitioner's affiliate, Lana Knit, Ltd., a wholly-owned Irish company.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

Issue (a)

[(a)(1) The petitioner entered into a contract of employment with Mr. Guild on September 24, 1963 for the period from October 1, 1963 to December 31, 1965. A copy of the agreement is attached hereto and marked "Exhibit B". Under the contract of employment, the petitioner was obligated to grant Mr. Guild a restricted stock option for the purchase of 25,000 shares of

petitioner's common stock.

(a)(2) On the same day that the contract of employment was executed, the parties entered into a restricted stock option purchase agreement, (the "Agreement"), a copy of which is attached hereto and marked as "Exhibit C". Under the Agreement, Mr. Guild was given the option to purchase 25,000 shares of petitioner's common stock for an option price equal to eighty-five percent (85%) of the price per share on the New York Stock Exchange on the date of grant, exercisable on the following dates and pursuant to the following terms: (1) no portion could be exercised during the first twelve (12) months of the Agreement; (2) during a period commencing twelve (12) months from the execution date, the option could be exercised to the extent of 10,000 shares; (3) an additional 5,000 shares could be acquired on April 1, 1965, April 1, 1966 and April 1, 1967 if a division of the petitioner, which Mr. Guild was to manage, reached sales and profit levels more fully set forth in the option; the right to exercise any of the options terminated in August, 1968.

(a)(3) The agreement further provided that if the employment of Mr. Guild was terminated "for cause", all rights under the Agreement would be immediately terminated.

(a)(4) In October, 1964, Mr. Guild exercised his option to acquire 10,000 shares at \$15.46 per share, the option price required under the Agreement.

(a)(5) On November 12, 1964, Mr. Guild's employment was

terminated "for cause". He has not been an employee of the petitioner or of any subsidiary of the petitioner since November 12, 1964. No exercise rights to any additional shares under the Agreement had accrued as of November 12, 1964.

(a)(6) Mr. Guild brought an action in April, 1965, against the petitioner for recovery of damages alleged to have resulted from the termination of his employment, a copy of the complaint in said action is attached hereto and marked as "Exhibit D". That complaint sought alternative damages in the sum of \$79,133.84 for Mr. Guild's alleged loss of salary and other perquisites and \$375,000 for Mr. Guild's alleged loss of the value of his right to exercise options to acquire 15,000 shares of petitioner's common stock.

(a)(7) In full settlement of the litigation Mr. Guild was permitted on November 20, 1967 to purchase 6,500 shares of petitioner's common stock for \$15.46 per share. The fair market value of the stock on that date was \$54.50 per share. The difference between the fair market value of the stock purchased and the sales price was \$253,760.00. Copies of the Stipulation of Discontinuance of said suit and the Release executed by Mr. Guild are attached hereto and marked as "Exhibit E" and "Exhibit F" respectively.

(a)(8) Pursuant to the settlement, three stock certificates were issued to Mr. Guild for 6,112 shares, 243 shares and 145 shares respectively for the petitioner's common stock. The petitioner believes the latter two certificates were transferred by Mr. Guild to his attorneys.

Conclusions

(1) Petitioner is entitled to a deduction under Section 162(a) or Section 165 in the amount of \$253,760.00 representing the difference between the fair market value of the common stock transferred and the purchase price paid by Mr. Guild. Mr. Guild was not an employee of the petitioner for purposes of Section 424(a)(2)(A) at any time after November 12, 1964.

(2) In the alternative, petitioner is entitled to a deduction under Section 162(a) or Section 165 in the amount of \$58,560.00 representing the difference between the fair market value of 1,500 shares of common stock transferred and the purchase price paid by Mr. Guild. Under no circumstances could Mr. Guild have been an employee of petitioner subsequent to December 31, 1965, and therefore, he would not have been entitled to exercise the option to acquire more than 5,000 shares of petitioner's common stock as an employee of petitioner within the meaning of Section 424(a)(2)(A).

(3) In the alternative, petitioner is entitled to a deduction under Section 162(a) or Section 165 in the amount of \$44,232.32 representing the difference between the fair market value of 1,133 shares of common stock transferred and the purchase price paid by Mr. Guild based upon the portion of the damages sought by Mr. Guild which were attributable to his salary and perquisites other than his rights under the stock option purchase agreement.

(4) In the alternative, petitioner is entitled to a deduc-

tion under Section 421(b) in the amount of \$15,147.52, representing the difference between the fair market value of the common stock transferred and the amount paid for 388 shares by Mr. Guild, which were transferred to parties other than Mr. Guild since this constituted a disqualifying disposition under Section 424(a)(1).

Issue (b)

(b)(1) The petitioner's wholly-owned subsidiary, Lana Knit, Ltd., was organized and is operated under the laws of the Republic of Ireland.

(b)(2) In anticipation of a currency devaluation of the Pound Sterling, and upon the request of Lana Knit, Ltd., certain action was taken on behalf of Lana Knit, Ltd., to protect it from the anticipated devaluation. Petitioner entered into a contract to sell Pounds Sterling short on behalf of Lana Knit, Ltd.

(b)(3) Petitioner entered into a forward currency contract on August 17, 1967 to sell 1,000,000 Pounds Sterling at the rate of 2.7423 per Pound, or a United States equivalent of \$2,742,300, to the Morgan Guaranty Trust Company of New York. This contract to sell was the culmination of several renewals of an initial contract to sell first entered into on January 18, 1967.

(b)(4) On December 29, 1967, the August 17, 1967 contract was closed by the purchase of 1,000,000 Pounds Sterling at the rate of 2.4010, or a United States equivalent of \$2,401,000 from

the Morgan Guaranty Trust Company of New York. The difference between the sales price and purchase price was \$341,300.00. This amount was paid directly by the Morgan Guaranty Trust Company of New York to the National Bank of Ireland to the account of Lana Knit, Ltd. and not to the petitioner.

(b)(5) Petitioner's sole involvement in the transaction was the placing of the orders to sell 1,000,000 Pounds Sterling short and to purchase 1,000,000 Pounds Sterling on behalf of Lana Knit, Ltd.

Conclusion

(1) The amount of profit realized on the exercise of the forward currency contract in the amount of \$341,300.00 should not be included in the petitioner's taxable income under either Section 61(a) or Section 482 since it merely acted as an agent on behalf of its wholly-owned subsidiary, Lana Knit, Ltd., in entering the forward currency contract.

Wherefore, the Petitioner prays that this Court may try the case and determine and adjudge.

1. The transfer of 6,500 shares of petitioner's common stock to Mr. Guild was not caused by the exercise of a restricted stock option pursuant to Section 424 since Mr. Guild was not an employee of the petitioner at the time of the exercise. Therefore, the amount of \$253,760.00, representing the difference between the fair market value of the common stock and the price paid, was in settlement of claims attributable to an employment contract and was deductible under either Section 162(a) or

Section 165.

2. The exercise of the forward currency contract resulting in \$341,300.00 realized gain was taxable to Lana Knit, Ltd., a wholly-owned Irish subsidiary of petitioner, and not to the petitioner.

3. That petitioner is entitled to such other and further relief, including a refund of taxes paid, as the Court, in its descretion, deems just and proper.

James S. Eustice

Stephen D. Gardner

Counsel for Petitioner
1345 Avenue of the Americas
New York, New York 10019

Of Counsel:

Kronish, Lieb, Shainswit,
Weiner & Hellman
1345 Avenue of the Americas
New York, New York 10019

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

 Bernard Wulkan, being duly sworn, says that he is Vice-President of Jonathan Logan, Inc., the petitioner above named, and as such is duly authorized to verify the foregoing petition; that he has read the foregoing, and is familiar with the statements contained therein, and that the statements contained therein are true, except those based on information and belief, and those he believes to be true.

Bernard Wulkan
Vice-President

Subscribed and sworn to
before me this 30th
day of October, 1972

Notary Public

Answer of Comm. of Internal Revenue (T.C. No. 8218-72)

JONATHAN LOGAN, INC.,

Petition 1972 DEC 15 PM 3 41

v.

UNITED STATES TAX COURT
cket No. 8218-72

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits the allegations of paragraph 1 of the petition.
2. Admits the allegations of paragraph 2 of the petition.
3. Admits the allegations of paragraph 3 of the petition.
4. (a) (1) through (b) Denies the allegations of paragraphs 4. (a) (1) through (b) of the petition.

5. Issue (a)

(a) (1) Admits the allegations contained in the first two sentences of subparagraph (a) (1) of paragraph 5 of the petition. Denies the remaining allegations of subparagraph (a) (1) of paragraph 5 of the petition. Alleges that the contract speaks for itself as to the rights and obligations thereunder.

(a) (2) Admits the allegations contained in the first two sentences of subparagraph (a) (2) of paragraph 5 of the petition. Denies the remaining allegations of subparagraph (a) (2) of paragraph 5 of the petition. Alleges that the agreement speaks for itself as to the rights and obligations thereunder.

(a)(3) Denies the allegations of subparagraph (a)(3) of paragraph 5 of the petition. Alleges that the agreement speaks for itself as to the rights and obligations thereunder.

(a)(4) Admits the allegations of subparagraph (a)(4) of paragraph 5 of the petition.

(a)(5) Admits that Mr. Guild's employment was terminated on November 12, 1964. Admits that he has not been an employee of the petitioner or of any subsidiary of the petitioner since November 12, 1964. Denies the remaining allegations of subparagraph (a)(5) of paragraph 5 of the petition.

(a)(6) Admits the allegations contained in the first sentence of subparagraph (a)(6) of paragraph 5 of the petition. Denies the remaining allegations of subparagraph (a)(6) of paragraph 5 of the petition. Alleges that the complaint speaks for itself as to the relief sought and the basis of the action.

(a)(7) Admits the allegations of subparagraph (a)(7) of paragraph 5 of the petition.

(a)(8) Admits the allegations of the first sentence of subparagraph (a)(8) of paragraph 5 of the petition. Denies the allegations contained in the second sentence of subparagraph (a)(8) of paragraph 5 of the petition.

Conclusions

(1) through (4) Denies the conclusory statements contained in subparagraphs (1) through (4) of page 6 of the petition.

Issue (b)

(b) (1) Admits the allegations of subparagraph (b) (1) of paragraph 5 of the petition.

(b) (2) Admits that petitioner entered into a contract to sell Pounds Sterling short. Denies the remaining allegations of subparagraph (b) (2) of paragraph 5 of the petition.

(b) (3) Admits the allegations of subparagraph (b) (3) of paragraph 5 of the petition.

(b) (4) Admits the allegations contained in the first two sentences of subparagraph (b) (4) of paragraph 5 of the petition. Denies the remaining allegations of subparagraph (b) (4) for lack of information sufficient to form a belief with respect thereto.

(b) (5) Denies the allegations of subparagraph (b) (5) of paragraph 5 of the petition.

Conclusion

(1) Denies the allegations contained in subparagraph (1) on page 8 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

(Signed) Lee H. Henkel, Jr.
JHH

LEE H. HENKEL, JR.
Chief Counsel
Internal Revenue Service

OF COUNSEL:

EMORY L. LANGDON
Regional Counsel
GEORGE J. MENDELSON
Attorney
Internal Revenue Service

970 Broad Street - Room 904
Newark, New Jersey 07102

Opinion of Tax Court (Consolidated dockets)

T. C. Memo. 1974-237

UNITED STATES TAX COURT

JONATHAN LOGAN, INC., Petitioner v. COMMISSIONER OF INTERNAL
REVENUE, Respondent

IRWIN C. GUILD and BERNICE GUILD, Petitioners v. COMMISSIONER
OF INTERNAL REVENUE, Respondent

Docket Nos. 8218-72
8284-72.

Filed September 16, 1974.

Petitioner Guild's employment with petitioner Logan, a Delaware corporation, was terminated by Logan. Guild brought a lawsuit against Logan for the alleged breach of his employment agreement which included a restricted stock option plan. Pursuant to the settlement of the lawsuit Logan permitted Guild to purchase a certain amount of stock at less than fair market value. Held, petitioner Guild failed to exercise a restricted stock option pursuant to sec. 424, I.R.C. 1954. Thus, the transfer of stock resulted in taxable income to Guild and a trade or business deduction to Logan. Held, further, the bargain element of the stock purchase is taxable to Guild as ordinary income. Held, further, legal expenses incurred by Guild with respect to the lawsuit are deductible.

James S. Eustice and Stephen D. Gardner, for the petitioner
in docket No. 8218-72.

Elias Rosenzweig, for the petitioners in docket No. 8284-72.

George J. Mendelson, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

WILES, Judge: Respondent determined a deficiency in the income tax for 1967 of petitioner Jonathan Logan, Inc. in the amount of \$230,994.78 and in the income tax for 1967 of petitioners Irwin C. Guild and Bernice Guild in the amount of \$161,458.79. The issues are:

(1) Whether petitioner Guild received common stock from Logan as the result of an exercise of a restricted stock option as described in section 424(a)¹ so that no income results to Guild and no business deduction is allowable to Logan;

(2) If Guild realized taxable income, whether it is taxable as ordinary income or capital gain;

(3) Whether Guild is entitled to a deduction for legal expenses incurred with respect to the lawsuit;

(4) If Guild's purchase of Logan stock met the requirements of section 424, whether his transfer of Logan stock to his legal counsel constitutes a disqualifying disposition under section 421(b).

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly.

1

All statutory references are to the Internal Revenue Code of 1954, as in effect during the tax year in issue, unless otherwise indicated.

Irwin C. Guild (hereinafter referred to as Guild) and Bernice Guild are husband and wife, who resided at New York, New York at the time the petition was filed herein. They filed a joint Federal income tax return for 1967 with the district director of internal revenue, New York, New York.

Jonathan Logan, Inc. (hereinafter referred to as Logan) is a Delaware corporation which had its principal place of business in North Bergen, New Jersey, at the time the petition was filed herein. Logan's Federal income tax return for 1967 was filed with the district director of internal revenue at Newark, New Jersey.

Guild entered into an employment agreement with Logan on September 24, 1963. This agreement provided for Guild's employment as executive sales manager of Logan's R & K Originals Division until December 31, 1965. Guild was to receive a salary of \$30,000 per year and a \$25,000 expense allowance per year.

In addition, Guild was granted the option to purchase 25,000 shares of Logan common stock at \$15.46 per share. The entire option was not exercisable at one time, but was broken up into exercise periods as follows:

On or after Sept. 24, 1964 -	10,000 shares
On or after Apr. 1, 1965 -	5,000 shares
On or after Apr. 1, 1966 -	5,000 shares
On or after Apr. 1, 1967 -	5,000 shares

- 4 -

The stock subject to option during the last three exercise periods could be purchased only if the R & K Originals Division met certain gross sales and net profit increase requirements. The parties agree that these conditions were met through December 31, 1966. The option was subject to certain other conditions as outlined in paragraphs 5 and 6 of the option agreement.

5. Termination of Employment and Death: If your employment by the Company or subsidiary terminates, this option shall cease for all purposes except that if such termination shall occur during the Exercise Period, this option may thereafter be exercised (to the extent to which it was exercisable at the time of such termination) during a period of three (3) months from the date of such termination, but not, in any event, later than the Expiration Date * * *. Notwithstanding the foregoing provisions, if your employment is terminated for cause, all of your rights hereunder shall expire immediately upon such termination.

6. Manner of Exercise: Should you desire to exercise your option to purchase any of the shares which at the time you are entitled to purchase hereunder, you shall give written notice of such election to the Company at its principal office in North Bergen, N. J., specifying the number of shares to be purchased, which notice shall be accompanied by payment to the Company in cash (or certified or bank cashier's check) of the purchase price for the number of shares being purchased. At the same time, you shall represent and agree with the Company in writing that you are acquiring the shares for investment purposes. The Company shall not be obligated to deliver any shares until they have been listed upon each Stock Exchange upon which outstanding shares of common stock at the time are listed, and not until there has been compliance with such laws and regulations as the Company may deem applicable. No fractional shares shall be delivered hereunder. Before issuing any shares upon exercise, the Company may require you to furnish a written representation that you are acquiring the shares for investment and not for distribution. [Emphasis added.]

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The expiration date referred to in paragraph five was September 24, 1968. The option by its terms contemplates that Guild's employment continue beyond the date specified in his employment agreement in order for him to exercise the options granted in the last two exercise periods.

In October 1964, Guild exercised his right with respect to the 10,000 shares subject to option during the first exercise period. Guild's employment was terminated by Logan on November 10, 1964. The following day, in a conversation with Logan's president, Guild requested that he be given what he considered due him under his employment agreement, including the right to purchase the remaining 15,000 shares subject to option. He was told that the matter would have to be litigated.

Guild filed suit against Logan on January 15, 1965, in the United States District Court for the Southern District of New York. This suit was dismissed without prejudice and a new suit instituted in the New York state courts. In this action Guild alleged that he sustained damages as follows:

a) Salary	\$62,639.00
b) Cash Expense Allowance	3,410.00
c) Automobile	4,100.00
d) Credit card (personal use)	2,733.00
e) Trips abroad	6,000.00
f) Health insurance	251.84
g) Deprivation of the right to purchase the remaining 15,000 shares of stock covered by said option	

- 6 -

Guild's action against Logan was settled on November 20, 1967, when Guild paid Logan \$100,490 for 6,500 shares of Logan stock having a market value of \$54.50 per share or \$354,250 for all the shares. This settlement was in satisfaction of the claims Guild had asserted against Logan.

Guild transferred 388 shares of the Logan stock to his legal counsel as payment for his services in settling that action. The 388 shares had a fair market value of \$22,116 for which the counsel paid \$5,999.48.

OPINION

The first issue is whether petitioner Guild received common stock from Logan as the result of an exercise of a restricted stock option as described in section 424(a). Under section 421(a), the effect of such an exercise would be that no income would result to Guild upon the transfer and no deduction

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SEC. 424. RESTRICTED STOCK OPTIONS.

(a) In General.--Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise after 1949 of a restricted stock option, if--

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, and

(2) at the time he exercises such option--

(A) he is an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, or

(B) he ceased to be an employee of such corporations within the 3-month period preceding the time of exercise.

under section 162 would be allowed to Logan with respect to the transferred stock.³ Respondent and petitioner Logan contend that within the three-month period following Guild's discharge no option was available for Guild to exercise. They also contend that, even if an option was available during that period, Guild failed to exercise it in the manner prescribed in section 1.421-1(e) of the Income Tax Regs.

At the time when Guild was discharged, he previously had exercised an option for 10,000 of the 25,000 shares that were to be made available to him under the employment contract. The next date when Guild could exercise additional warrants was April 1, 1965. Because Guild's employment terminated prior to

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SEC. 421. GENERAL RULES.

(a) Effect of Qualifying Transfer.--If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a), 423(a), or 424(a) are met--

(1) except as provided in section 422(c)(1), no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

- 6 -

the commencement of the next exercise period, he lost his right to exercise any of the options that otherwise would have been available. Guild argues that he did have the right to exercise his options because Logan retroactively had accelerated his rights under the option by agreeing to sell him Logan stock in settlement of his lawsuit. We do not agree. Logan contested Guild's right to purchase stock under the option from the day after his employment was terminated. Logan did nothing to accelerate Guild's rights under the option. Although after long negotiations Logan allowed Guild to purchase 6,500 shares of stock at the option price, we do not view this factor as an admission by Logan that Guild could have exercised his option in November 1964. Logan used the medium of a stock sale at a bargain price to compensate Guild for damages arising out of the alleged breach of his entire employment agreement of which the stock option was a part. The Logan stock was transferred to Guild pursuant to the compromise settlement of a lawsuit not pursuant to the exercise of a restricted stock option plan. Accordingly, we conclude that the requirements of section 424(a) were not met because no option was available to Guild within the three-month period following his discharge.

Furthermore, even if such an option was available, we believe that Guild failed to exercise it in the manner prescribed in section 1.421-1(e), Income Tax Regs. The term "exercise" is defined

in section 1.421-1(e), Income Tax Regs., as "the act of acceptance by the optionee of the offer to sell contained in the option. In general, the time of exercise is the time when there is a sale or contract to sell between the corporation and the individual." In order to determine whether such a sale or contract to sell was entered into we must determine whether Guild complied with the terms of the written option agreement. See section 1.421-1(a), Income Tax Regs.

Guild's option required that his exercise thereof be in writing specifying the number of shares to be purchased and containing a declaration that he intended to hold the stock for investment. It also required that he tender cash or a certified or cashier's check at the time of exercise. Guild contends that either his conversation with Logan's president after termination of his employment or his filing suit within three months after termination constitutes an exercise of his option. We do not agree. The conversation with Logan's president did not constitute a written exercise of the option. Furthermore, the filing of a lawsuit for damages arising out of the alleged breach of his employment agreement did not fulfill the requirements of a written exercise as set forth in the option agreement. Guild never tendered payment in the required form. He did not become obligated to buy Logan stock until final settlement of the

lawsuit in 1967. We therefore hold that Guild failed to exercise a restricted stock option in the manner prescribed in section 424(a). Thus, section 421(a) does not apply in the present situation so that as a result of the transfer Guild realized income to the extent of the difference between the fair market value of the stock and the option price, and Logan is allowed a deduction under section 162 for the same amount.

In so holding, we have rejected petitioner's additional contention that Guild was wrongfully discharged, that the settlement was concerned only with Guild's rights under the option agreement and that Logan's delay in complying with Guild's exercise should not alter the tax consequences of the transaction. Without commenting on the validity of this reasoning, we find that Guild has failed to establish the correctness of any of the assumptions upon which such reasoning is based.

Having determined that Guild realized income as a result of his purchase of Logan stock, we next must determine whether such income should be characterized as ordinary income or capital gain. Regarding the treatment of stock sales pursuant to stock option plans not entitled to the benefits of section 421, the Supreme Court has said that "when assets are transferred by an employer to an employee to secure better services they are plainly compensation. It makes no difference that the compensation is paid in stock rather than in money." Commissioner v. LoBue, 351 U.S. 243, 247 (1956). The fact that Guild's option

was exercisable only if certain periodic sales and profit increases were obtained by his department establishes that it was designed to secure better services from him. The other items which formed the basis of Guild's lawsuit were also compensatory items. The proceeds of the lawsuit came to Guild in lieu of compensation and should be taxed accordingly. Raytheon Production Corp. v. Commissioner, 144 F. 2d 110 (C.A. 1, 1944), certiorari denied 323 U.S. 779 (1944).

Guild argues that he is entitled to capital gain treatment pursuant to section 1234(a)⁴ which provides that gain attributable to the sale or exchange of an option to buy or sell property shall be considered capital gain in certain situations. We previously have stated that no option was available to be exercised after the date that Guild was discharged. We do not believe that the

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SEC. 1234. OPTIONS TO BUY OR SELL.

(a) Treatment of Gain or Loss.--Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, a privilege or option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option or privilege relates has in the hands of the taxpayer (or would have in the hands of taxpayer if acquired by him).

sale of Logan stock to Guild pursuant to the settlement of the lawsuit constituted the sale or exchange of an option. Even if that were the case, however, section 1234(a) still would not apply to the present situation. Section 1.1234-1(e)(1), Income Tax Regs., provides that section 1234 does not apply to gain resulting from the sale or exchange of an option to the extent that the gain is in the nature of compensation. See also Rank v. United States, 345 F. 2d 337 (1965); Donald H. Kunsman, 49 T.C. 62 (1967). We therefore hold that the amount realized by Guild as a result of the stock transfer is ordinary income.

The next issue is whether Guild is entitled to a deduction for legal expenses incurred with respect to the lawsuit. In view of our holding that Guild realized ordinary income to the extent of the bargain element of the stock sale, respondent concedes that Guild is entitled to deduct the legal fees relating to the lawsuit.

Having held that Guild's purchase of Logan stock did not qualify as the exercise of a restricted stock option, we find it unnecessary to consider respondent's argument that Guild's transfer of stock to his attorney constitutes a disqualifying disposition.

Petitioner Guild has made additional arguments, all of which we have considered but none of which we believe merit further discussion.

Decisions will be entered
under Rule 155.

Decision of Tax Court (No. 8284-72)

UNITED STATES TAX COURT
WASHINGTON

55a

IRVIN C. GUILD and BERNICE
GUILD, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 8284-72.

DECISION

Pursuant to the opinion of the Court filed on September 16, 1974, the respondent herein on March 6, 1975, filed a computation for entry of decision, and the petitioners herein on April 7, 1975, filed a computation for entry of decision. Hearing was had on April 9, 1975. The premises considered; it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1967 in the amount of \$137,662.26.

Entered: MAY 1 1975

David J. Wells
Judge.

Decision of Tax Court (No. 8218-72)

UNITED STATES TAX COURT

WASHINGTON

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56a

JONATHAN LOGAN, INC.

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 8218-72.

D E C I S I O N

Pursuant to the opinion of the Court filed on
September 16, 1974, it is

ORDERED and DECIDED: That there is a deficiency in
income tax due from the petitioner for the taxable year
1967 in the amount of \$54,581.97.

Entered: MAY 1 1975

David D. Willis

Judge.

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Stipulation of Facts to Tax Court (Consolidated docket)

UNITED STATES TAX COURT

JONATHAN LOGAN, INC.,)

Petitioner,)

v.)

DOCKET NO. 8218-72

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

IRWIN C. GUILD and BERNICE GUILD,)

Petitioners,)

v.)

DOCKET NO. 8284-72

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements are true and may be accepted as facts, all exhibits referred to herein and attached hereto being incorporated in this stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated; that Jonathan Logan, Inc. notes, pursuant to Rule 31(b)(5), its objection on the grounds of irrelevancy and immateriality to paragraphs 8, 9, 10, 11, 14 and 15; that either party may at the trial object to the introduction of any part hereof, solely upon the ground of claimed irrelevancy or immateriality; and

that the parties stipulate to the authenticity of all exhibits referred to herein, reserving to themselves the right to contest the truth, relevancy or materiality thereof.

1. Irwin C. Guild (hereafter "Guild") and Bernice Guild are husband and wife residing at New York, New York. Their Federal income tax return for the calendar year 1967 was prepared and filed under the cash receipts and disbursements method with the District Director of Internal Revenue, New York, New York. A copy of that return is attached hereto as Joint Exhibit 1-A.

2. Jonathan Logan, Inc. (hereafter "Logan") is a corporation organized under the laws of the State of Delaware. Its principal place of business is 3901 Liberty Avenue, North Bergen, New Jersey 07047. Logan's Federal income tax return for the calendar year 1967 was filed with the District Director of Internal Revenue for the District of Newark at Newark, New Jersey.

3. On September 24, 1963, Guild entered into an Employment Agreement with Logan. A copy of such employment agreement is attached hereto as Joint Exhibit 2-B. Guild's employment by Logan commenced on or about said date.

4. On September 24, 1963 Logan granted Guild an option to purchase shares of its common stock upon the terms and conditions set forth in an option letter dated September 24, 1963. A copy of such option letter is attached hereto as Joint Exhibit 3-C.

5. The stock options granted by Logan to Guild pursuant to Joint Exhibit 3-C were, when granted, "Restricted stock option(s)" within the meaning of Section 421 of the Internal Revenue Code of 1954 (hereafter "the Code") as such section existed prior to the amendment on February 26, 1964 of Part II of Sub-chapter D of Chapter 1 of the Code by Public Law 88-272, Section 221(a).

6. Guild exercised his rights with respect to the first installment of such option and acquired 10,000 shares on or about October 9, 1964. There is no issue between the parties hereto with respect to the tax consequences to Guild or Logan arising from such exercise.

7. Guild's employment by Logan continued from its inception until terminated by Logan by a notice addressed to him on November 23, 1964, stated to be effective as of November 10, 1964. A copy of said notice is attached hereto as Joint Exhibit 4-D. During the year 1964 Guild received from Logan salary amounting to \$26,538.32 and an expense allowance of \$22,864.93.

8. Logan contended that Guild had been discharged for cause. Guild contended that his discharge by Logan was unjustified.

9. On January 15, 1965, Guild commenced, in the United States District Court for the Southern District of New York, an action against Logan (65 Civil Action File No. 135). A copy of the summons and complaint in such action is attached hereto as

Joint Exhibit 5-E. By agreement of counsel for Guild and Logan such action was dismissed without prejudice to either party; and simultaneously, a new action was instituted by Guild against Logan in the Supreme Court of the State of New York for the County of New York (Index number 16223/1965). In all material respects the complaint in the New York Supreme Court action was identical with the complaint in the Federal Court action. A copy of such complaint is attached hereto as Joint Exhibit 6-F.

10. On or about May 20, 1965 Logan served its answer to the complaint denying the material allegations thereof and setting forth a number of affirmative defenses thereto. A copy of Logan's answer is attached hereto as Joint Exhibit 7-G.

11. On or about October 13, 1967 Logan moved in the New York Supreme Court action for partial summary judgment. A copy of such notice of motion and affidavit in support thereof is attached hereto as Joint Exhibit 8-H. A copy of Logan's brief in support of such motion is attached hereto as Joint Exhibit 9-I. Logan's motion for partial summary judgment was postponed from time to time and never decided.

12. On or about November 20, 1967 Guild's action against Logan was settled. In connection with such settlement the following documents were executed and delivered:

(a) A stipulation of discontinuance whereby Guild's action was discontinued with prejudice and without costs to either party as against the other;

(b) General release by Logan in favor of Guild;

(c) A general release by Guild in favor of Logan and David Schwartz and Richard J. Schwartz, officers of Logan; and

(d) A letter dated November 20, 1967 signed by the President of Logan and by Guild.

Copies of such stipulation of discontinuance, general releases and letter are attached hereto as Joint Exhibits 10-J, 11-K, 12-L and 13-M, respectively.

13. Pursuant to Exhibit 13-M Guild paid to Logan the sum of \$100,490 and received from Logan certificates for 6,500 shares of Logan's common stock.

14. The "Gross Sales" and "Net Profit" of the R & K Division of Logan for each of the twelve month periods ending December 31, 1964, December 31, 1965 and December 31, 1966 exceeded the requirements applicable thereto which were specified in Section 4 of Joint Exhibit 3-C.

15. After being discharged from his employment by Logan, Guild obtained employment with L'Aiglon Apparel, Inc., which employment commenced on or about January 1, 1965. During the calendar year 1965 Guild received total compensation from L'Aiglon Apparel, Inc. in the amount of \$46,209.37.

16. The daily closing prices for Logan's stock on the New York Stock Exchange where it was principally traded during the period November 10, 1964 through January 15, 1965 ranged from 24-5/8 on November 10, 1964 to 29-5/8 on January 15, 1965.

17. In connection with Guild's actions against Logan, he had entered with his then counsel into a contingent retainer agreement. On the settlement of Guild's action against Logan, such counsel became entitled under such agreement to receive from Guild 388 shares of Logan's common stock out of the 6,500 shares received by Guild upon the payment by such counsel to Guild of \$5,999.48. On or about November 30, 1967 Guild assigned and delivered to such counsel certificates for 388 shares of Logan's common stock for which he was paid by such counsel the sum of \$5,999.48.

The fair market value of such 388 shares at the time of delivery thereof to Guild's counsel was \$57 per share, or an aggregate of \$22,116.

18. The fair market value of Logan's common stock on November 20, 1967 was \$54.50 per share.

Elias Rosenzweig, Esq.
Counsel for Petitioners,
Irwin C. Guild and
Bernice Guild
120 Broadway
New York, New York 10005

/s/ Meade Whitaker JJH
Meade Whitaker, Esq.
Chief Counsel
Internal Revenue Service
Newark, New Jersey

Stephen D. Gardner, Esq.
Counsel for Petitioner,
Jonathan Logan, Inc.
1345 Avenue of the Americas
New York, New York 10019

Joint Exhibit 2-B

Jonathan Logan inc JOINT EXHIBIT 2-B

Sit 24,
August , 1963

Mr. Irwin C. Guild
19 East 33rd Street
New York, N. Y.

Dear Mr. Guild:

This is to confirm our understanding with respect to your employment by Jonathan Logan, Inc. (the "Company"). The Company hereby hires you, and you hereby agree to work for the Company on the following terms and conditions:

1. The Company hereby hires you, and you hereby agree to work for the Company in the capacity of Executive Sales Manager of the R & K Originals Division (herein called the "Division") of the Company. You shall be responsible for the supervision and control of all salesmen employed by the Division. In the performance of your duties, you shall be subject to the direction and control of the President and Board of Directors of the Company.

In addition to your primary duties, you shall perform such other services for the Company and any of its affiliates or subsidiaries, of a nature consistent with the responsibility of your primary duties, as may be assigned to you by our President or Board of Directors. You also agree to serve, without additional compensation, as an officer or director of the Company, if so appointed or elected.

You shall devote your full time and best efforts to the performance of the foregoing services.

2. The term of this agreement shall be for two years and four months from September 1, 1963 to December 31, 1965, subject to earlier termination by us in the event of your death or inability to perform the services required hereunder due to physical disability. Neither the term of this agreement nor the exercise dates of the stock option hereinafter referred to shall

Mr. Irwin C. Guild

August , 1963

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be affected by the fact that certain portions of said option are exercisable only after the expiration date of this agreement, it being intended that such portions of the option shall be exercisable by you if you continue in the employ of the Company after the expiration date of this agreement.

3. Your compensation for the services to be performed hereunder shall be a salary at the rate of \$30,000 per annum. In addition, you shall receive an expense allowance of \$25,000 per annum, for which you shall not be required to account to the Company. Said salary and expense allowance shall be payable in such installments or at such times as is customary for executive personnel of the Company.

As a further inducement to enter into the employment of the Company we agree to and hereby do grant to you, a restricted stock option for the purchase of 25,000 shares of the common stock of the Company. Such option shall be in the form and upon the terms and conditions set forth in Exhibit A annexed hereto.

4. You will not, during the term hereof, directly or indirectly, own, manage, operate, join, control or participate in the ownership, management or control of, or be connected, employed by or otherwise associated in any manner with, any business in the apparel trades. You agree that our remedy at law for breach hereof would be inadequate and you agree that we shall be entitled to an injunction for your breach hereof.

5. You hereby agree that any information you may receive during the course of your employment, including but not limited to information relating to the operation and financing of the Company and its subsidiaries and affiliates, styles and designs, manufacturing processes and procedures, sales and distribution methods, suppliers and customers, shall be confidential and shall not be used or divulged by you outside the scope of your employment without the consent of the Company. In addition to any other remedy provided by law or equity, the Company shall be entitled to injunctive relief against any actual or threatened breach of this provision.

6. You represent and warrant that you have no commitment or obligations of any kind whatsoever inconsistent with this agreement and are under no disability of any kind to enter into this agreement. You hereby agree to indemnify and

Mr. Irwin C. Guild

August , 1963

hold the Company harmless against any claim based upon circumstances alleged to be inconsistent with this warranty.

7. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their personal representatives, successors and assigns.

8. If at any time in the future the Company shall create or acquire a subsidiary corporation to engage in the activities currently carried on by the Division, the Company shall have the right to assign its rights and obligations hereunder to such subsidiary, and upon such assignment and the written assumption by said subsidiary of the obligations of the Company hereunder, the Company shall be relieved of all further liabilities or obligations under this agreement.

9. This agreement constitutes our entire understanding and may not be amended, terminated or discharged orally.

10. All notices required to be given hereunder shall be sent to the address of each of us as set forth in this letter or to any other address hereafter designated by either of us to the other in writing.

If the foregoing accurately sets forth our agreement, please indicate by signing and returning to us the enclosed copy of this letter.

Very truly yours,

JONATHAN LOGAN, INC.

By: Richard L. Whit

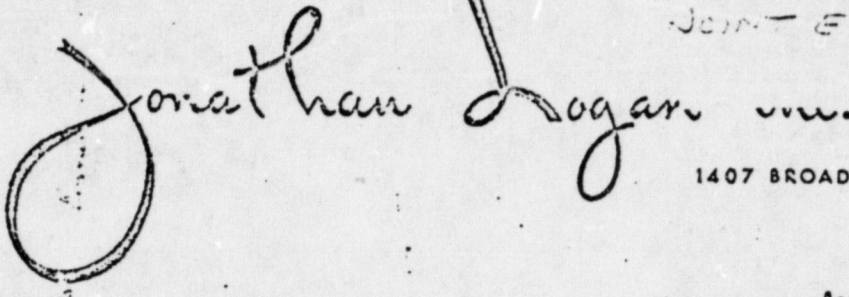
Executive Vice President

ACCEPTED AND APPROVED:

Irwin C. Guild

Joint Exhibit 3-C

JOINT EXHIBIT 3C

Jonathan Logan, Inc.

1407 BROADWAY • NEW YORK 18, N.Y. • WISCONSIN 7-4790

August , 1963

Mr. Irwin C. Guild
19 East 33rd Street
New York, N. Y.

Dear Mr. Guild:

Pursuant to and in consideration of your entering into an employment agreement with us this day to act as Executive Sales Manager of our R & K Division, the undersigned, Jonathan Logan, Inc., a Delaware corporation, hereinafter called the "Company," has this day granted to you an option to purchase the number of shares of its Common Stock set forth below, subject to and upon the terms and conditions hereinafter stated. The terms and conditions of said option and its exercise are as follows:

1. Number of Shares: The number of shares subject to this option is twenty-five thousand shares.

2. Option Price: The option price per share is eighty-five percent (85%) of the highest price per share on the New York Stock Exchange on _____, 1963.

3. Expiration Date: 3:00 P.M. (New York City time) on August , 1968.

4. Exercise Period and Conditions of Rights of Exercise: Provided that at the time of exercise you are employed by the Company or a subsidiary of the Company, this option may be exercised as follows:

(a) During the period of twelve (12) months from the date hereof, this option may not be exercised to any extent.

(b) During the period commencing twelve (12) months from the date hereof and continuing until the expiration date of the option, this option may be exercised from time to

Mr. Irwin C. Guild

August , 1963

time to the extent of 10,000 shares.

(C) During the period commencing April 1, 1965 and continuing until the expiration date of the option, this option may be exercised from time to time to the extent of an additional 5000 shares upon the condition that that the "Gross Sales and the "Net Profit" of" the R & K Division for the 12 months period ending December 31, 1964 shall each have exceeded the "Gross Sales" and the "Net Profit," respectively of the R & K Division for the 12 months' period ending December 31, 1963 by at least 5%. If said Gross Sales and Net Profit for the 12 months period ending December 31, 1964 shall not each exceed the Gross Sales and Net Profit for the 12 months period ending December 31, 1963, then this option shall, ipso facto terminate as to said 5000 shares, and shall at no time be exercisable by you with respect thereto.

During the period commencing April 1, 1966 and continuing until the expiration date of the option, this option may be exercised from time to time to the extent of an additional 5000 shares upon the condition that that the "Gross Sales" and the "Net Profit" of" the R & K Division for the 12 months period ending December 31, 1965 shall each have exceeded the "Gross Sales" and the "Net Profit," respectively of the R & K Division for the 12 months' period ending December 31, 1963 by at least 15%. If said Gross Sales and Net Profit for the 12 months' period ending December 31, 1965 shall not each exceed the Gross Sales and Net Profit for the 12 months period ending December 31, 1963 by at least 15% then this option shall, ipso facto terminate as to said 5000 shares, and shall at no time be exercisable by you with respect thereto.

During the period commencing April 1, 1967 and continuing until the expiration date of the option, this option may be exercised from time to time to the extent, of an additional 5000 shares upon the condition that that the "Gross Sales" and the Net Profit "of" the R & K Division for the 12 months period ending December 31, 1966 shall each have exceeded the "Gross Sales" and the "Net Profit;" respectively of the R & K Division for the 12 months' period ending December 31, 1963 by at least 25%. If said Gross Sales and Net Profit for the 12 months' period ending December 31, 1966 shall not exceed the Gross Sales and Net Profit for the 12 months period ending December 31, 1963 by at least 25% then this option shall, ipso facto terminate as to said 5000 shares, and shall at no time be exercisable by you with respect thereto.

As used in this agreement with respect to the

Mr. Irwin C. Guild

August , 1963

years ending December 31, 1964, December 31, 1965 and December 31, 1966 the terms "Gross Sales" and "Net Profit" shall mean the gross Sales and net profit before income taxes, respectively of the R & K Division, as determined by the auditors for the Company and included in the certified Consolidated Statement of Income of the Company which forms a part of the Annual Report to Stockholders for each of said years. Gross Sales and Net Profit of the R & K division shall include not only sales and profit from the manufacture and sale of the line of misses' dresses currently produced by the Division, but also sales and profit from the manufacture of any other line of apparel which may hereafter be undertaken by the Division.

As used in this agreement with respect to the year ending December 31, 1963, the term "Gross Sales" of the R & K Division shall mean the sum of _____ plus the gross sales of the R & K Division for the period July 1, 1963 to December 31, 1963, as determined by the auditors for the Company and included in the certified Consolidated Statement of Income which forms a part of the Annual Report to Stockholders for 1963, and the term "Net Profit" shall mean the sum of _____ plus the net profit before income taxes of the R & K Division for the period July 1, 1963 to December 31, 1963, as determined by the aforesaid auditors and included in the aforesaid Consolidated Statement of Income.

All determinations by the auditors for the Company of Gross Sales and "Net Profit" shall be binding and conclusive upon all parties hereto.

5. Termination of Employment and Death: If your employment by the Company or subsidiary terminates, this option shall cease for all purposes, except that if such termination shall occur during the Exercise Period, this option may thereafter be exercised (to the extent to which it was exercisable at the time of such termination) during a period of three (3) months from the date of such termination, but not, in any event, later than the Expiration Date; provided that if during the Exercise Period (i) your employment is terminated by death or (ii) your employment terminates and death occurs within three (3) months thereafter, this option may thereafter be exercised (to the extent to which it was exercisable at the time of your death) during a period of six (6) months after your death, but not, in any event, later than the Expiration Date. Notwithstanding the foregoing provisions, if your employment is terminated for cause, all of your rights hereunder shall expire immediately upon such termination.

6. Manner of Exercise: Should you desire to exercise your option to purchase any of the shares which at the time you are entitled to purchase hereunder, you shall give written notice

Mr. Irwin C. Guild

August , 1963

of such election to the Company at its principal office in North Bergen, N. J., specifying the number of shares to be purchased, which notice shall be accompanied by payment to the Company in cash (or certified or bank cashier's check) of the purchase price for the number of shares being purchased. At the same time, you shall represent and agree with the Company in writing that you are acquiring the shares for investment purposes. The Company shall not be obligated to deliver any shares until they have been listed upon each Stock Exchange upon which outstanding shares of common stock at the time are listed, and not until there has been compliance with such laws and regulations as the Company may deem applicable. No fractional shares shall be delivered hereunder. Before issuing any shares upon exercise, the Company may require you to furnish a written representation that you are acquiring the shares for investment and not for distribution.

7. Option Not Transferable: This option is not transferable by you otherwise than by will or by the laws of descent and distribution. During your lifetime, this option shall be exercisable only by you, subject to the provisions herein stated.

8. Adjustment: In the event of any stock dividend, split-up, combination or exchange of shares or recapitalization or change in capitalization of the Company, the number and kind of shares that then remain subject to this option shall be proportionately and appropriately adjusted without any change in the aggregate purchase price to be paid for such remaining shares as so adjusted, upon the exercise of this option.

Please return the duplicate hereof signed by you in the place provided for that purpose.

Very truly yours,

JONATHAN LOGAN, INC.

By Richard I. Logan

Executive Vice-President

I hereby agree to hold for investment any shares acquired hereunder. I accept this option subject to all the terms and conditions set forth herein.

Irwin C. Guild
Irwin C. Guild

Joint Exhibit 4-D

71a
Jonathan Logan inc.

1407 BROADWAY • NEW YORK 18, N.Y. • WISCONSIN 7-4790

November 23, 1964

Mr. Irwin Guild
19 East 33 Street
New York, New York

Dear Mr. Guild:

This will confirm our prior advice to you that your employment as executive sales manager of the R & K Originals Division of this Company has been terminated, effective as of November 10, 1964.

Very truly yours,

JONATHAN LOGAN, INC.

By: Richard J. Schwartz
President

Joint Exhibit 5-E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
IRWIN C. GUILD,

Plaintiff,

COMPLAINT

-against-

Civil Action No.

JONATHAN LOGAN, INC.,

Defendant.
-----x

Plaintiff, by his attorneys, EPSTEIN AND FURMAN,
alleges:

1. Plaintiff is a citizen of the State of New York, residing at 139 E. 33rd Street, New York City.
2. Upon information and belief, defendant is a corporation organized and existing under and by virtue of the laws of the state of Delaware, having an office and place of business at 1407 Broadway, New York City.
3. The matter in controversy, exclusive of interest and costs, exceeds the amount of \$10,000.
4. Prior to August of 1963, and at all times since, defendant has been engaged in the manufacture and sale, among other things, of ladies' wearing apparel of various types and fashions.
5. Prior to August of 1963, plaintiff had had many years experience as a sales executive in the ladies' apparel industry and, at the time of the agreement, hereinafter re-

ferred to, was one of the key executives of a large company in such industry.

6. In or about August of 1963, plaintiff and defendant entered into an agreement which provided, among other things, that:

(a) Defendant employed plaintiff as Executive Sales Manager of its R & K Originals division.

(b) In said capacity plaintiff was to be responsible for the supervision and control of the salesmen in said division, and was to be subject to the direction and control only of the President and Board of Directors of defendant.

(c) The term of the agreement was to be from the time plaintiff commenced performance of his duties, to December 31, 1965.

(d) Defendant was required to give plaintiff the following compensation:

(i) Salary at the rate of \$55,000 per annum; and

(ii) A stock option for the purchase of 25,000 shares of the common stock of defendant, and

(iii) A fixed cash expense allowance of \$250 per month, for which no accounting was required; and

(iv) Use for personal purposes, at defendant's expense, of a new Cadillac automobile and rent, gasoline, oil, wash and garage therefor; and

(v) Unlimited credit card facilities, for

business and personal use, at defendant's sole expense; and

(vi) Blue Cross and Blue Shield health insurance, for plaintiff and his wife, at defendant's sole expense; and

(vii) A minimum of two trips per year abroad for plaintiff and his wife, at defendant's sole expense.

7. Thereafter and on or about September 1, 1963, plaintiff entered into the performance of his said contract and duly performed all the conditions of such contract on his part, until he was prevented from so doing by the acts of the defendant hereinafter alleged.

8. On or about October 9, 1964, and pursuant to the terms of said stock option, plaintiff exercised same to the extent of 10,000 shares and paid for same at the agreed price and received delivery thereof.

9. On or about November 12, 1964, the defendant without just cause breached the said contract on its part and failed to perform the same and, without advance notice, discharged plaintiff from employment thereunder and refused to permit him to continue with the performance of the said agreement.

10. By reason of the facts hereinbefore alleged, plaintiff has sustained damage as follows:

(a) Salary	\$ 62,639
------------	-----------

(b) Cash expense allowance	3,410
(c) Automobile	4,100
(d) Credit card (personal use)	2,733
(e) Trips abroad	6,000
(f) Health insurance	251.84
(g) Deprivation of the right to purchase the remaining 15,000 shares of stock covered by said option	

11. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

1. (a) In the sum of \$79,133.84, representing the first five items specified in paragraph 10 hereof, together with (b) a decree directing defendant to permit plaintiff to exercise his said option as to the remaining 15,000 shares of stock at any time between the date of said decree and August 31, 1968; or, in the alternative, directing defendant to permit plaintiff to exercise said option: from time to time, to the extent of 5,000 shares, at any time between April 1, 1965 and the option's expiration date; from time to time, to the extent of an additional 5,000 shares, at any time between April 1, 1966 and the option's termination date; and from time to time, to the extent of the remaining 5,000 shares, at any time between April 1, 1967 and the

option's expiration date.

2. In the alternative to 1 above, in the sum of \$79,133.84 representing the first five items specified in paragraph 10 hereof, plus \$375,000 representing the reasonable value of plaintiff's said option as to the remaining 15,000 shares of defendant's stock, aggregating the total of \$454,133.84.

3. For such other and further relief as to the Court may seem just and proper, together with interest and the costs and disbursements of this action.

EPSTEIN AND FURMAN

By: *Samuel Furman*
A Member of the Firm

Attorneys for Plaintiff
Office & P. O. Address
261 Madison Avenue
New York 16, N.Y.

Joint Exhibit 6-F

199—Summons, Supreme Court, without Notice.

JOINT EXHIBIT 6-F

JULIUS FLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

Supreme Court of the State of New York
County of **NEW YORK**

DENIS C. GUILD

Plaintiff

against

JONATHAN LOGAN, INC.,

Defendant

Plaintiff designates

New York County
as the place of trial.

Summons

Plaintiff resides in

New York County.

To the above named Defendant :

You are hereby Summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, **April 15,**19 **65****EPSTEIN AND FURMAN**

Attorney for Plaintiff

Office and Post Office Address

261 Madison Avenue**New York 16, N. Y.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

IRWIN C. GUILD,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	<u>COMPLAINT</u>
JONATHAN LOGAN, INC.,	:	
	:	
Defendant	:	

-----x

Plaintiff, by his attorneys, EPSTEIN AND FURMAN, as and for his complaint herein, respectfully shows to this court and alleges:

1. Upon information and belief, defendant is a corporation organized and existing under and by virtue of the laws of the State of Delaware, doing business in the State of New York and having an office and its principal place of business at 1407 Broadway, New York City.

2. Prior to August of 1963, and at all times since, defendant has been engaged in the manufacture and sale, among other things, of ladies' wearing apparel of various types and fashions.

3. Prior to August of 1963, plaintiff had had many years experience as a sales executive in the ladies' apparel industry and, at the time of the agreement,

hereinafter referred to, was one of the key executives of a large company in such industry.

4. In or about August of 1963, plaintiff and defendant entered into an agreement which provided, among other things, that:

(a) Defendant employed plaintiff as Executive Sales Manager of its R & K Originals division.

(b) In said capacity plaintiff was to be responsible for the supervision and control of the salesmen in said division, and was to be subject to the direction and control only of the President and Board of Directors of defendant.

(c) The term of the agreement was to be from the time plaintiff commenced performance of his duties, to December 31, 1965.

(d) Defendant was required to give plaintiff the following compensation:

(i) Salary at the rate of \$55,000 per annum; and

(ii) A stock option for the purchase of 25,000 shares of the common stock of defendant; and

(iii) A fixed cash expense allowance of \$750 per month, for which no accounting was required; and

(iv) Use for personal purposes, at defendant's expense, of a new Cadillac automobile and rent, gasoline, oil, wash and garage therefor; and

(v) Unlimited credit card facilities, for business and personal use, at defendant's sole expense; and

(vi) Blue Cross and Blue Shield health insurance, for plaintiff and his wife, at defendant's sole expense; and

(vii) A minimum of two trips per year abroad for plaintiff and his wife, at defendant's sole expense.

5. Thereafter and on or about September 1, 1963, plaintiff entered into the performance of his said contract and duly performed all the conditions of such contract on his part, until he was prevented from so doing by the acts of the defendant hereinafter alleged.

6. On or about October 9, 1964, and pursuant to the terms of said stock option, plaintiff exercised same to the extent of 10,000 shares and paid for same at the agreed price and received delivery thereof.

81a

7. On or about November 12, 1964, the defendant without just cause breached the said contract on its part and failed to perform the same and, without advance notice, discharged plaintiff from employment thereunder and refused to permit him to continue with the performance of the said agreement.

8. By reason of the facts hereinbefore alleged, plaintiff has sustained damage as follows:

E/

(a) Salary.	\$ 62,639
(b) Cash expense allowance. . .	3,410
(c) Automobile.	4,100
(d) Credit card (personal use). .	2,733
(e) Trips abroad.	6,000
(f) Health insurance.	251.84
(g) Deprivation of the right to purchase the remaining 15,000 shares of stock covered by said option	

E

9. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

1. (a) In the sum of \$79,133.84, representing the first five items specified in paragraph 8 hereof, together with (b) a decree directing defendant to permit plaintiff to exercise his said option as to the remaining 15,000 shares of stock at any time

between the date of said decree and August 31, 1968; or, in the alternative, directing defendant to permit plaintiff to exercise said option; from time to time, to the extent of 5,000 shares, at any time between April 1, 1956 and the option's expiration date; from time to time, to the extent of an additional 5,000 shares, at any time between April 1, 1966 and the option's termination date; and from time to time, to the extent of the remaining 5,000 shares, at any time between April 1, 1967 and the option's expiration date.

2. In the alternative to 1 above, in the sum of \$79,133.84 representing the first five items specified in paragraph 8 hereof, plus \$375,000 representing the reasonable value of plaintiff's said option as to the remaining 15,000 shares of defendant's stock, aggregating the total of \$454,133.84.

3. For such other and further relief as to the Court may seem just and proper, together with interest and the costs and disbursements of this action.

EPSTEIN AND FURMAN
Attorneys for Plaintiff
Office and Post Office Address
261 Madison Avenue
New York 16, New York 10013

Joint Exhibit 7-G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

83a

-----X
IRWIN C. GUILD,

Plaintiff

-against-

VERIFIED ANSWER

JONATHAN LOGAN, INC.,

Defendant
-----X

Defendant, JONATHAN LOGAN, INC., by its attorneys, WIEN, LANE & KLEIN, for its answer to the complaint herein, respectfully alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.
2. Denies each and every allegation contained in paragraphs 8 and 9 of the complaint.
3. Denies each and every allegation contained in paragraph 1 of the complaint, except admits that defendant is a corporation organized and existing under the laws of the State of Delaware and having an office at 1407 Broadway, New York City.
4. Denies each and every allegation contained in paragraph 4 of the complaint, except admits that defendant and plaintiff executed an agreement in writing dated September 24, 1963, relating to defendant's employment of plaintiff as Executive Sales Manager of the R & K Originals Division of defendant, and admits that defendant and plaintiff executed a separate paper writing dated August, 1963, relating to a stock option for plaintiff, and defendant begs leave of this Court to refer to the original of each such document for its terms, conditions, provisions and effect.

5. Defendant denies each and every allegation contained in paragraph 5 of the complaint and specifies that plaintiff materially breached the employment agreement on his part to be performed, that plaintiff failed properly to perform work as directed, that plaintiff's performance of his work was not acceptable and failed to meet necessary standards, that plaintiff wrongfully created and maintained antagonisms with and poor and harmful relationships with fellow workers, that plaintiff wrongfully created and maintained antagonisms with and poor and harmful relationships with customers and potential customers of defendant, and otherwise damaged the good will of defendant with its customers and potential customers, that plaintiff otherwise performed his duties in an inefficient, incompetent and unacceptable manner, that plaintiff improperly put merchandise into production, thereby causing unnecessary and costly losses to defendant, that plaintiff wrongfully was disobedient and insubordinate to his superiors, that plaintiff refused to perform work as directed, and that plaintiff otherwise failed, neglected and refused fully and properly to perform the duties on his part required to be performed.

6. Denies each and every allegation contained in paragraph 6 of the complaint, except admits that on or about October 9, 1964, defendant sold and plaintiff purchased 10,000 shares, at an agreed price, and plaintiff received delivery thereof.

7. Denies each and every allegation contained in paragraph 7 of the complaint, except admits that plaintiff was discharged from employment for cause.

AS AND FOR A FIRST, SEPARATE, DISTINCT AND COMPLETE DEFENSE TO PLAINTIFF'S COMPLAINT, DEFENDANT ALLEGES:

8. The complaint fails to state facts sufficient to constitute a cause of action.

AS AND FOR A SECOND, SEPARATE, DISTINCT AND PARTIAL DEFENSE TO PLAINTIFF'S COMPLAINT, DEFENDANT ALLEGES:

9. Paragraph 9 of the aforesaid agreement of employment dated September 24, 1963 provides:

"9. This agreement constitutes our entire understanding and may not be amended, terminated or discharged orally."

10. Section 15-301 of the New York General Obligations Law (formerly Personal Property Law, § 33-c(1)) provides:

"1. A written agreement or other written instrument which contains a provision to the effect that it cannot be changed orally, cannot be changed by an executory agreement unless such executory agreement is in writing and signed by the party against whom enforcement of the change is sought or by his agent."

11. Insofar as the complaint seeks damages or relief for salary in excess of the rate of \$30,000 per annum, for a fixed cash expense allowance of \$250 per month, for use for personal purposes of a new Cadillac automobile and rent, gasoline, oil, wash and garage therefor, for unlimited credit card facilities, for business and personal use, for Blue Cross and Blue Shield health insurance for plaintiff and his wife, for a minimum of two trips per year abroad for plaintiff and his wife, or for a stock option for the purchase of 15,000 shares of the common stock of defendant, each of the alleged agreements in such portions of the complaint is void and is barred by the applicable statute of frauds.

AS AND FOR A THIRD, SEPARATE, DISTINCT
AND PARTIAL DEFENSE TO PLAINTIFF'S
COMPLAINT, DEFENDANT ALLEGES:

12. Section 15-701 of the New York General Obligations Law (formerly Personal Property Law, § 33(1)) provides:

"Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;"

13. Insofar as the complaint seeks damages or relief for salary in excess of the rate of \$30,000 per annum, for a fixed cash expense allowance of \$250 per month, for use for personal purposes of a new Cadillac automobile and rent, gasoline, oil, wash and garage therefor, for unlimited credit card facilities, for business and personal use, for Blue Cross and Blue Shield health insurance, for plaintiff and his wife, for a minimum of two trips per year abroad for plaintiff and his wife, or for a stock option for the purchase of 15,000 shares of the common stock of defendant, each of the alleged agreements in such portions of the complaint is void and is barred by the applicable statute of frauds.

AS AND FOR A FOURTH, SEPARATE, DISTINCT,
AND PARTIAL DEFENSE TO PLAINTIFF'S
COMPLAINT, DEFENDANT ALLEGES:

14. The aforesaid agreement of employment dated September 24, 1963 is a wholly integrated and entire agreement and insofar as the complaint seeks damages or relief for salary in excess of the rate of \$30,000 per annum, for

a fixed cash expense allowance of \$250 per month, for use for personal purposes of a new Cadillac automobile and rent, gasoline, oil, wash and garage therefor, for unlimited credit card facilities, for business and personal use, for Blue Cross and Blue Shield health insurance for plaintiff and his wife, for a minimum of two trips per year abroad for plaintiff and his wife, or for a stock option for the purchase of 15,000 shares of the common stock of defendant, each of the alleged agreements in such portions of the complaint may not be proved, is unenforceable, and is barred by the parol evidence rule.

AS AND FOR A FIFTH, SEPARATE, DISTINCT,
AND PARTIAL DEFENSE TO PLAINTIFF'S
COMPLAINT, DEFENDANT ALLEGES:

15. Paragraph 5 of the aforesaid paper writing dated August, 1963 provides, in part:

"Notwithstanding the foregoing provisions, if your employment is terminated for cause, all of your rights hereunder shall expire immediately upon such termination."

16. On or about November 12, 1964, and after the various breaches of employment agreement by plaintiff as aforesaid, the employment of plaintiff was terminated for cause.

WHEREFORE, defendant, JONATHAN LOGAN, INC., demands judgment dismissing the complaint herein, together with the costs and disbursements of this action, and that defendant have such other and further relief in the premises as to this Court may seem just and proper.

WIEN, LANE & KLEIN
Attorneys for Defendant
Office & P. O. Address
60 East 42nd Street
New York, N. Y. 10017

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

RICHARD J. SCHWARTZ, being duly sworn, deposes and says that he is the President of JONATHAN LOGAN, INC., the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by said defendant is because the said defendant is a foreign corporation, and deponent an officer thereof, to wit, its President.

/s/ Richard J. Schwartz
Richard J. Schwartz

Sworn to before me this

20th day of May, 1965

RALPH W. FELSTEN
Notary Public, State of New York
No. 41-1191375
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1967

Joint Exhibit 10-J

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOINT EXHIBIT

10-J

----- x
IRWIN C. GUILD,

Plaintiff,

-against-

JONATHAN LOGAN, INC.,

Defendant.
----- x

EXHIBIT "E"

STIPULATION OF
DISCONTINUANCE

Index No.
16223/1965

The above entitled action having been compromised and settled, and all the parties thereto being adults or corporations and there being no person not a party who has any interest in the subject matter of said action, it is hereby stipulated and agreed, by and between the attorneys for the respective parties and by plaintiff, pro se, that the above entitled action be, and the same hereby is, discontinued with prejudice, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court pursuant to CPLR 3217.

Dated: New York, New York
November 13, 1967

Epstein and Furman
Epstein and Furman,
Attorneys for Plaintiff

Wien, Lane, Klein & Malkin
Wien, Lane, Klein & Malkin,
Attorneys for Defendant

Irwin C. Guild
Irwin C. Guild, Plaintiff

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS.:

On the 13th day of November, 1967, before me personally came IRWIN C. GUILD, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

BETHARD FURMAN
Notary Public, State of New York
My Comm. Expires 12/31/68
Queens County

Joint Exhibit 11-K

To all to whom these Presents shall come or may Concern,

Greeting: KNOW YE, That JONATHAN LOGAN, INC.

a corporation organized and existing under and by virtue of the laws of the State
of Delaware Ten for and in consideration of the sum of
dollars (\$10.00)
lawful money of the United States of America to it in hand paid by and other good and
valuable consideration from Irwin C. Guild,

the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by
these presents does for itself and its successors, remise, release and forever discharge the said

Irwin C. Guild, his

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of
action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, con-
tracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions,
claims and demands whatsoever, in law, in admiralty, or in equity, which against him, it

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason
of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these
presents.

This release may not be changed orally.

In Witness Whereof, the said JONATHAN LOGAN, INC.

has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized
officer on the 21st day of November 1967.

(Corporate Seal)

Jonathan Logan, Inc.
By Richard J. Schwartz
Richard J. Schwartz

STATE OF NEW YORK COUNTY OF NEW YORK

ss.:

On the 21st day of November 1967 before me personally came

Richard J. Schwartz to me known, who, being by me duly sworn, did
depose and say that he resides at No. 530 Park Avenue, New York, New York
that he is the President of Jonathan Logan, Inc.
the corporation described in, and which executed, the foregoing instrument; that he knows the seal of
said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by
order of the board of directors of said corporation; and that he signed his
name thereto by like order.

Ralph W. Felsten
RALPH W. FELSTEN
Notary Public, State of New York
No. 41-1191873
Qualified in Queens County
Commission Expires March 30, 1969

Joint Exhibit 12-L

B 110—General Release—Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE*, That **IRWIN C. GUILD**, residing at 19 East 33rd Street, New York, New York

for and in consideration of the sum of

Ten dollars (\$ 10.00)
lawful money of the United States of America to him in hand paid by

and for other good and valuable consideration from David Schwartz, Richard J. Schwartz and Jonathan Logan, Inc., a Delaware Corporation, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents does for himself, his heirs, executors, and administrators and assigns, remise, release and forever discharge the said David Schwartz, Richard J. Schwartz and Jonathan Logan, Inc., their

heirs, executors, administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against them, he

ever had, now has or which his heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release is intended to cover all claims of every kind and nature which Irwin C. Guild has or ever had against the parties above named, including, without limitation, any rights or causes of action asserted in that certain lawsuit entitled Irwin C. Guild, plaintiff, vs. Jonathan Logan, Inc., defendant, Supreme Court, New York County, Index No. 16223/1965, and any rights or causes of action which said Irwin C. Guild has or ever had under any employment agreement or stock option agreement entered into between him and Jonathan Logan, Inc.

This release may not be changed orally.

In Witness Whereof, I have hereunto set my hand and seal
the 20th day of November 1967.
Sealed and delivered in the presence of

Irwin C. Guild L.S.

State of NEW YORK County of NEW YORK ss.:
On the 20th day of November 1967 before me personally came
IRWIN C. GUILD

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same

JOSEPH A. FURMAN
Notary Public in and for the State of New York
My Comm. Expires March 30, 1969

Joseph A. Furman

Joint Exhibit 13-M

JOINT EXHIBIT 13-M

SHOW ROOM
1407 BROADWAY
NEW YORK

Jonathan Logan inc.

39th STREET & TONNELE AVENUE · NORTH BERGEN, N. J.
TELEPHONE UNION 4-7200

November 13, 1967

Mr. Irwin C. Guild
139 East 33rd Street
New York, New York

Dear Mr. Guild:

You will recall that on or about September 24, 1963, we granted to you an option to purchase 25,000 shares of our common stock. You exercised the option with respect to 10,000 shares, for which you paid the option purchase price of \$15.46 per share and received the stock. You attempted further to exercise the option with respect to the remaining 15,000 shares, but your right to do so was questioned by us.

We do hereby recognize your right to 6,500 shares of our stock upon the terms and conditions of the option. You are delivering to us simultaneously with the execution hereof, the sum of \$100,490, in full payment of said shares.

We shall cause our transfer agent to issue to you, forthwith, stock certificates representing 6,500 shares of our common stock and shall deliver same to your attorneys, Epstein & Furman, Esqs., 261 Madison Avenue, New York, New York.

Very truly yours,

JONATHAN LOGAN, INC.

By [Signature]
President

The above is accepted and
agreed to:

[Signature]
Irwin C. Guild

Guild Exhibit 14

CHEMICAL BANK

93a

Corporate Trust Department SP 5
PO Box 694, Cooper Station, New York, NY 10003

Refer to: G. Sellers
Tel: (212) 770 3549

September 25, 1973

Mr. Elias Rosenzweig
Levitt Brauner Baron Rosenzweig & Kligler
120 Bway
New York, N.Y. 10005

Re: Jonathan Logan, Inc.
a/c Irwin C. Guild

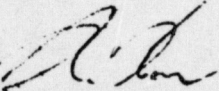
Dear Mr. Rosenzweig:

On November 28, 1967 Corporation Trust Co. issued certificates 2168 for 145 shares, 2169 for 243 shares and 2170 for 6112 shares of the above company's common stock to Mr. Irwin C. Guild.

This transfer was issued against Jonathan Logan's treasury stock and was transferred in Jersey City, N.J. Therefore, we suggest you contact Mr. B. Walken of the company as to the reason for issuance of these shares.

The address is 1411 Broadway, New York, N.Y.

Very truly yours,



Robert Koss
Officer's Assistant

GS:pb
(enc.)

Guild Exhibit 15

Amid-15

94a

JONATHAN LOGAN, INC. and Subsidiary Companies

CONSOLIDATED BALANCE SHEET

	December 31,	
	1967	1966
Assets		
Current Assets:		
Cash	\$ 5,637,842	\$ 4,201,485
Accounts Receivable	29,163,034	27,200,829
Inventories—Note 2	41,945,360	48,532,329
Sundry Receivables and Prepaid Charges	4,072,298	4,680,361
Total Current Assets	80,818,534	84,615,004
 Investment in and Advances to Texfin, C.A.—Notes 1 and 3		
Investment	7,391,151	6,450,064
Advances	5,207,150	—
 Property Assets—At Cost, Less Accumulated		
Depreciation—Note 4	30,795,914	27,689,625
 Goodwill	6,459,113	6,459,113
 Sundry Other Assets	1,599,826	2,230,029
	<u>\$132,271,688</u>	<u>\$127,443,835</u>

See accompanying notes to financial statements.

JONATHAN LOGAN, INC. and Subsidiary Companies

CONSOLIDATED BALANCE SHEET

	December 31,	
	1967	1966
Liabilities		
Current Liabilities:		
Notes Payable—Banks	\$ 17,000,000	\$ 18,000,000
Bank Advances—Foreign Subsidiaries	746,433	1,672,244
Long-Term Debt—Portion Due Within One Year	1,533,430	1,528,287
Accounts Payable	18,003,296	20,713,464
Accrued Expenses and Sundry Liabilities	7,231,051	6,737,181
Estimated Federal and Foreign Taxes on Income	2,732,988	2,308,524
Total Current Liabilities	47,247,198	50,959,700
Long-Term Debt—Note 5	31,020,975	32,064,762
Deferred Taxes on Income	2,126,405	2,103,329
Stockholders' Equity:		
Common Stock—Par Value \$.50—Note 7		
Authorized—5,000,000 Shares		
Issued —3,510,664 Shares (3,467,569 Shares—1966)	1,755,332	1,733,784
Capital Surplus	10,110,295	9,046,362
Retained Earnings—Note 5	40,111,732	31,755,709
	51,977,359	42,535,855
Less: Treasury Shares—At Cost—5,450 Shares		
(11,950 Shares—1966)	100,249	219,811
	51,877,110	42,316,044
	\$132,271,688	\$127,443,835

JONATHAN LOGAN, INC. and Subsidiary Companies

Notes to Consolidated Financial Statements December 31, 1967

NOTE 1—PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and its domestic and foreign subsidiaries except Texfin, C.A., a Venezuelan company, which is reflected in the financial statements on an equity basis. In the Company's annual report to the Securities and Exchange Commission, Texfin, C.A. will be included in consolidation with no subsequent change in either stockholders' equity or net income. All subsidiaries are wholly-owned. Intercompany items and transactions have been eliminated in consolidation.

The accounts of foreign subsidiaries have been translated, in consolidation, into dollars at conversion rates appropriate to the nature of the individual items.

NOTE 2—INVENTORIES

Inventories, stated at the lower of cost or market, consist of the following:

	1967	1966
Raw Materials and Supplies	\$21,102,519	\$27,996,586
Work in Process	7,161,703	6,095,299
Finished Goods	13,681,138	14,440,444
	<u>\$41,945,360</u>	<u>\$48,532,329</u>

NOTE 3—INVESTMENT IN TEXFIN, C.A.

The following is a condensed balance sheet of Texfin, C.A. as at December 31, 1967:

Current Assets	\$14,484,227
Property Assets (Net of Reserves)	26,027,474
Deferred Charges and Other Assets	73,947
	<u>40,585,648</u>
Current Liabilities	22,094,155
Advances from Parent Company	5,207,150
Long-Term Debt (Non-Current Portion)	5,743,754
Deferred Liabilities	149,438
	<u>33,194,497</u>
Net Assets	<u>\$ 7,391,151</u>
Consisting of:	
Capital Stock	\$ 2,094,421
Retained Earnings	5,047,595
Surplus Reserve	249,135
	<u>\$ 7,391,151</u>

On December 31, 1967 Texfin, C.A. was contingently liable on discounted customers' notes to the extent of \$4,320,147. Bank indebtedness of \$388,594 was fully secured by inventories. Approximately \$19,000,000 of liabilities are guaranteed by the parent company.

Management has under consideration a proposal whereby essentially all of Texfin's inventory and property assets will be transferred to a subsidiary of Texfin. Concurrently, Texfin will exchange 50 percent of the subsidiary's shares for 50 percent of the outstanding shares of Telares de Maracay, a Venezuelan textile manufacturer unaffiliated with Jonathan Logan or its subsidiaries.

NOTE 4—PROPERTY ASSETS

Property assets are summarized as follows:

	1967	1966
Land and Buildings	\$10,450,404	\$ 9,718,409
Machinery, Equipment and Fixtures	26,428,414	24,088,857
Leasehold Improvements	2,844,073	1,983,552
Interests in Leased Properties (a)	2,081,604	1,548,639
	<u>41,804,495</u>	<u>\$37,339,457</u>
Accumulated Depreciation	11,008,581	9,649,832
	<u>\$30,795,914</u>	<u>\$27,689,625</u>

(a) Represents capitalized cost of rentals under lease terms which are essentially financing arrangements.

Depreciation charged to income amounted to \$2,651,375 in 1967 and \$2,167,509 in 1966. Property assets acquired prior to 1962 have been depreciated on an accelerated basis for both financial statement and income tax purposes. Subsequent additions have been depreciated on a straight-line basis as regards financial reporting and on an accelerated basis for tax purposes. Provision has been made for estimated taxes deferred to future years resulting from the excess of tax depreciation over the corresponding charge in the income statement.

Notes to Consolidated Financial Statements December 31, 1967

NOTE 5—LONG-TERM DEBT

Long-term debt consists of the following:

(a) 5¼% Promissory Note	\$14,000,000
(b) 5¼% Convertible Subordinated Notes ..	15,000,000
Other Long-Term Debt (including \$1,808,757 related to interests in leased properties—Note 4)	3,554,405
	<u>32,554,405</u>
Portion due Within One Year	1,533,430
	<u>\$31,020,975</u>

(a) Payable annually on July 1 of each year in installments of \$1,250,000 with a final installment (July 1, 1978) of \$1,500,000.

(b) Payable in ten annual installments beginning with June 1, 1977. The notes are convertible at \$57.50 per common share subject to certain anti-dilution provisions.

Under the most restrictive terms of the notes in (a) and (b), the Company is required to maintain a consolidated working capital of \$16,000,000. The agreements additionally restrict funded debt, investments, rentals, pledging of assets, dividends and other items. At December 31, 1967, consolidated retained earnings available for restricted payments amounted to approximately \$3,900,000. The specific restrictions and minimum requirements apply to the parent company and consolidated subsidiaries without regard to Texfin, C.A.

NOTE 6—INCOME TAXES

No provision has been made for federal income taxes which may be payable on future distributions of retained earnings of subsidiaries. The earnings of Irish subsidiaries are exempt from Irish taxation through 1983.

NOTE 7—CAPITAL STOCK

(a) Stock Options.

At December 31, 1967, 359,481 common shares were reserved for issuance upon exercise of stock options granted to certain officers and employees of the Company at 85 to 100 percent of the fair market value on the grant dates, with per share prices ranging from \$15.00 to \$50.75. The outstanding options are exercis-

able in the years indicated, at an aggregate option price as follows:

	No. of Shares
1968	100,268
1969	122,945
1970	85,019
1971	51,249
	<u>359,481</u>

Aggregate Option Price \$14,474,461

(b) Changes in Outstanding Shares.

The changes in outstanding shares during 1967 are tabulated as follows:

Balance—beginning of year*	3,455,619
Previously unissued shares issued upon exercise of stock options	43,095
Treasury shares issued upon exercise of stock options	6,500
Shares outstanding—end of year	<u>3,505,214</u>

* In connection with an acquisition in 1966 on a pooling of interests basis, 5,000 additional shares have become issuable and are reflected in the financial statements with retroactive recognition of their effect on outstanding shares, capital surplus and earnings per share. Reference is made to Note 9 regarding contingent stock issuances.

NOTE 8—EMPLOYEES' PENSION FUND

Effective January 1, 1965, the Company adopted a non-contributory pension plan covering substantially all employees other than members of a collective bargaining unit. The plan provides for normal retirement at age 65 and, under certain conditions, earlier optional retirement. Pension costs, on an accrual basis, including amortization of past service cost over a 25 year period, amounted to \$458,400 in 1967 and \$405,923 in 1966.

NOTE 9—COMMITMENTS AND CONTINGENCIES

The Company is lessee under various long-term leases expiring between 1970 and 1989 with aggregate average annual rentals of approximately \$1,700,000.

The Company is contingently obligated to issue a maximum of 20,000 common shares (limited to 5,000 shares in any one year) upon the future achievement of certain earnings levels by an acquired company.

Auditors' Report

Clarence Rainess & Co.

CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Stockholders
Jonathan Logan, Inc.

In our opinion, based upon our examination and upon the reports of other auditors as regards the financial statements of foreign subsidiaries, the accompanying consolidated statements present fairly the financial position of Jonathan Logan, Inc. and subsidiary companies as at December 31, 1967 and the results of operations for the year then ended, together with the supplemental working capital data, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of the consolidated statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Clarence Rainess & Co.

New York, N. Y.
February 16, 1968

Guild Exhibit 16

and E. 10 -

99a

No. **A**

PAY TO THE ORDER OF *Nathaniel Lyons, Inc.*

2 Oct 1964 **1-662-260**

One hundred fifty four thousand six hundred and two **\$154600 ⁰⁰/₁₀₀**

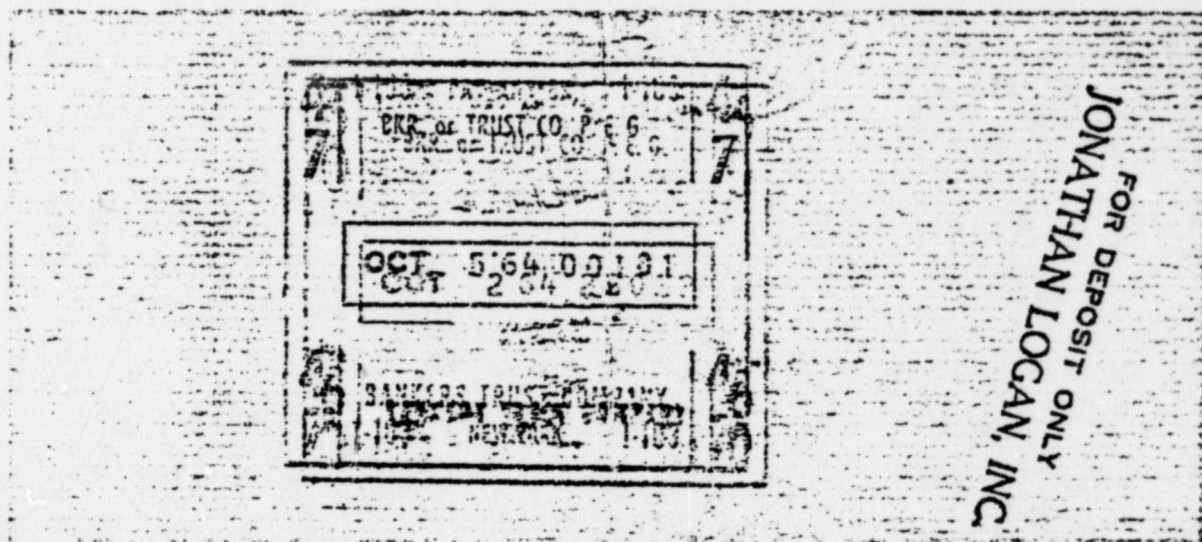
DOLLARS

TRADE BANK and Trust Company
SEVENTH AVENUE AT 38th STREET - NEW YORK, N.Y.

John C. H. [Signature]

TRADE BANK & TRUST CO.

1385-697-S **0015460000**



Transcript of Proceedings in Tax Court

UNITED STATES TAX COURT

JONATHAN LOGAN, INC., ET AL

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 8218-72
8284-72LOCATION OF HEARING: UNITED STATES TAX COURT
NEWARK, NEW JERSEY

DATE: November 16, 1973

BEFORE: THE HONORABLE DARRELL D. WILES

APPEARANCES: GEORGE J. MENDELSON
for the RespondentSTEPHEN D. GARDNER
for the PetitionerELIAS ROSENZWIEG
MARTIN FARBER
for the Petitioner

I N D E X

	<u>PAGE</u>
OPENING STATEMENT ON BEHALF OF THE PETITIONER	3
By Mr. Gardner (Logan)	
OPENING STATEMENT ON BEHALF OF THE PETITIONER	11
By Mr. Rosenzweig (Guild)	
OPENING STATEMENT ON BEHALF OF THE RESPONDENT	17
By Mr. Mendelson	
EVIDENCE ON BEHALF OF THE PETITIONER (Guild)	

Witnesses

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Irwin C. Guild	26	34 (Logan)		
		<u>CROSS</u>		
		37 (Respondent)		

E X H I B I T

Joint				
<u>Number</u>	<u>Description</u>	<u>Ident</u>	<u>Evid</u>	
1-A - 13-M	Stipulation	2	2	
<u>Petitioner's</u>	(Guild)			
14	Letter from Commercial Bank	20	21	
15	Logan's certified financials	22	25	
16	Check to Logan	33	34	

P R O C E E D I N G S

THE CLERK: The Court is again in session.

THE COURT: Be seated. Will you call the next case?

THE CLERK: 8218-72 and 8284-72, Jonathan Logan, Inc., and related Petitioner.

MR. MENDELSON: For the Respondent, George J. Mendelson.

MR. GARDNER: For the Petitioner, Jonathan Logan, Stephen D. Gardner.

MR. ROSENZWIEG: For the Petitioners, Irwin C. and Bernice Gild, Elias Rosenzwieg and Martin Farber.

THE COURT: Thank you, gentlemen. Only because -- Mr. Mendelson, you are standing, do you want to introduce the stipulation at this time?

MR. MENDELSON: Please. Your Honor, I filed the stipulation --

THE COURT: Yes.

MR. MENDELSON: With the Clerk of the Court before for Your Honor's convenience, but I would just like to offer it for the record.

THE COURT: All right.

MR. MENDELSON: Attached thereto, I believe are 13 Exhibits, they are all joint on the part of all three parties. And, preliminarily to the trial of the

1 stock option issue, which is common to both Petitioners,
2 I would like to read into the record the settlement that
3 has been affected between Jonathan Logan and the REspondent
4 with respect to the forward currency transaction issue, which
5 was the only other issue in the Logan case which was
6 petitioned.

7 The parties have settled that issue on the
8 following basis. The total deduction which was disallowed
9 by the Respondent was \$341,300.00. The settlement that has
10 been reached is to allow a deduction for one-third of that
11 amount, that would be \$113,767.00, and to disallow the
12 remaining \$227,533.00.

13 THE COURT: Thank you. Only because Jonathan
14 Logan, Inc. name appears first, would you like to make
15 an opening statement, Mr. Gardner?

16 MR. GARDNER: I would, Your Honor.

17 If the Court please, the consolidated case of
18 Jonathan Logan, Inc. versus the Commissioner and the Irwin
19 C. Guild versus the Commissioner presents to the Court a
20 single question of the proper treatment to be given the
21 bargain element of the transfer of 6500 shares by Logan,
22 a former employer to Guild, a former employee, in settlement
23 of a suit brought by the employee.

24 Now, Logan does not intend to call any witnesses,
25 except with leave of the Court in the event that it is

1 necessary to rebut anything that might be said in the
2 Guild versus the Commissioner case.

3 Since, Logan does not intend to call any witnesses,
4 we would request the Court permit me approximately five
5 minutes to summarize and refer to the specific stipulated
6 evidence that we consider to be most relevant for consi-
7 deration.

8 The facts of the case can be simply stated. On
9 or about September 24th, 1963, Logan hired Guild and
10 entered into an employment contract with Guild.

11 Exhibit 2-B and paragraph 2 of Exhibit 2-B,
12 we consider to be the critical parts of the employment
13 contract. That employment contract states that the term
14 of this agreement shall be for two years and four months
15 from September 1, 1963 to December 31, 1965, subject to
16 earlier termination by us. It goes on to say that neither
17 the term of this agreement nor the exercise dates of the
18 stock option here and after referred to, shall be affected
19 by the fact that certain portions of said option are exer-
20 cisable only after the expiration date of this agreement,
21 it being intended that such portions of the option shall
22 be exercisable by, and there is a word missing, by you, I
23 think, if you continue in the employ of the company, after
24 the expiration date of this agreement.

25 At the same time that the employment agreement

1 was entered into between Logan and Guild, there was an
2 option agreement entered into between the two parties, and
3 that is Exhibit 3-C. And, essentially, that option
4 agreement is typical of many restricted stock options
5 prior to 1964, and qualified stock options subsequent to
6 that date.

7 It essentially sets out that the optionee, Guild,
8 may have the right to acquire over a certain period of
9 time, a total of 25,000 shares of stock of Logan. But,
10 the critical part of the option agreement is paragraph
11 4, which is on page 1, of Exhibit 3-C, and paragraph 4
12 begins by saying, provided that at the time of exercise
13 you are employed by the company, and then goes on to set
14 out, in sub-paragraphs A, B and C, the periods for which
15 the 25,000 shares can be acquired.

16 Paragraph A as it says, the option is not
17 exercisable during the first 12 months, which is September,
18 1963 until September, 1964.

19 Paragraph B permits Guild to acquire as the first
20 block of his option 10,000 shares at any time after Septem-
21 ber 24th, 1964. In fact, Guild exercised his option with
22 respect to those shares, acquired them, and they are not
23 in issue in this case.

24 Paragraph C, or sub-paragraph C, of paragraph
25 4, is the critical paragraph with respect to the remaining

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1 15,000 shares. And, essentially what paragraph C does,
2 in its three paragraphs that you see set out on page 2,
3 sets out a staging at which these -- the 15,000 shares are
4 exercisable, in 5,000 share blocks, the first of which
5 commenced on April 1, 1965, the second April 1, 1966, and
6 the third April 1, 1967.

7 Now, it seems fairly critical to Logan that
8 no further shares of stock under the option could be
9 acquired pursuant to its terms until April 1, 1965, because
10 on or about November 10th, 1964, Mr. Guild's employment
11 with Logan was terminated, and that termination taking
12 place on November 10th, 1964 was approximately five months
13 prior to the point in time at which under the terms of the
14 written option, he could have acquired any further stock.

15 Now, the termination was oral, but the written
16 evidence of the termination is Exhibit 4-D, and it is a
17 simple one sentence letter stating that it was a confirmation
18 of his termination affective November 10th, 1964.

19 At no time subsequent to November 10th, 1964,
20 and the Government has admitted it in its answer to the
21 Logan petition, at no time subsequent to November 10th, 1964,
22 was Mr. Guild an employee, a consultant, or in any way shape
23 or form, connected with Jonathan Logan, Inc., the Peti-
24 tioner.

25 On or about January 15th, 1965, approximately

1 three months after the time at which his employment was
2 terminated, Mr. Guild brought suit in the Federal District
3 Court in the Southern District of New York, alleging a
4 wrongful breach of his employment contract. He sought in
5 that suit, and that is attached as Exhibit 5-E, although
6 we don't consider it to be too relevant, he sought in that
7 suit a number of damages, going to his salary, to certain
8 emoluments, that went with his employment, and in addition
9 to that he sought a decree from the Federal District
10 Court ordering Jonathan Logan to permit him to acquire
11 the 15,000 shares that were yet to be acquired under the
12 option at the option price of \$15.46.

13 In addition to seeking specific performance, or
14 a decree requiring performance by Logan, he also sought
15 in lieu of that, cash damages of \$450,000.00.

16 Now, the federal complaint was dismissed some-
17 time after January 15th, without prejudice to any party,
18 and in April, of 1965, on or about April 15th, 1965,
19 essentially the same law suit was begun in the Supreme
20 Court of the State of New York. And, essentially the
21 same complaint was filed on behalf of Guild. That all took
22 place in 1965.

23 On November 20th, 1967, three years and ten days
24 after his employment was terminated, there was a settlement
25 of that suit, and the State Court proceeding was discontinued.

1 And, in the settlement of the suit, and I call the Court's
2 attention to Exhibit 12-L, there were mutual releases as
3 is normal in this kind of proceeding, executed on one hand
4 by Guild against --for the benefit of Logan and its prin-
5 cipal officers, and on the other hand for Logan against
6 Guild releasing each other from any claims.

7 And, Exhibit 12-L, the typed in language of the
8 Exhibit sets out essentially, and I don't have to read it
9 to the Court, the normal kind of release of every con-
10 ceivable claim that Irwin Guild would have against Logan,
11 or against the principal officers, the President and
12 Chairman of the Board, of Logan, David Schwartz and
13 Richard Schwartz, in addition any claims owing out of the
14 law suit, in the State of New York.

15 Pursuant to the settlement of that suit, Logan
16 transferred 6500 shares of its common stock to Guild, at
17 a purchase price of \$15.46, which is the purchase price
18 set out in the option agreement.

19 Guild paid a total of \$100,490.00 for that
20 stock. On November 20th, 1967, the date of the transfer,
21 the fair market value of 6500 shares of stock of Jonathan
22 Logan, Inc. was \$384,250.00, representing a bargain element
23 or a spread between the purchase price and the fair market
24 value of \$253,760.00. The sole issue before this Court is
25 the question of whether that bargain element of \$253,760.00

1 is deductible by Jonathan Logan, Inc. pursuant to Section
2 162 of the Internal REvenue Code as an ordinary and necessary
3 business expense, or whether that bargain element is not
4 deductible to Jonathan Logan, Inc. because of Section
5 421 (a) (2), and Section 424 of the INternal Revenue Code.

6 Now, if I might for just a matter of maybe
7 two minutes point to the specific parts of the statute and
8 the regulations that the Petitioner feels relevant here.

9 Section 424 (a) (2) requires that for an indivi-
10 dual to obtain a special treatment provided by the restricted
11 stock option provision, he must at the time he exercises
12 such an option either be an employee of the corporation,
13 granting such option, or have ceased to be an employee of
14 such corporation within the three months preceding the
15 time of exercise.

16 However, we must look to the Treasury Regulations,
17 1.421-1 (e), and it is the -1 (e) regulations that are
18 operative in this case because we are dealing with a restricted
19 stock option granted prior to 1964, and it defines the
20 term exercise, and in so doing it states that act of accep-
21 tance by the optionee of the offer to sell contained in the
22 option constitutes an exercise in other words, and it goes
23 on to say, and a paraphrase, that in general, the term
24 exercise means when there is a contract of sale between the
25 employer and the employee. And, essentially it is the

1 position of Jonathan Logan, Inc. that on the date Mr. Guild
2 was -- his employment was terminated, with the company, that
3 all rights Mr. Guild had or at least any offer of any
4 rights were withdrawn by the company. Now, it may well
5 have been that Mr. Guild had claims against the company
6 growing out of the -- some ambiguity between his employment
7 contract and his option contract, and it may well be that
8 he had very legitimate claims against the company, over a
9 question of whether he was fired for cause or not fired for
10 cause.

11 But, it is Logan's position, that at no time
12 subsequent to the date on which the employment was terminated,
13 could you technically exercise the option. In addition,
14 the statute requires that the option be in writing, or the
15 regulations require that the option be in writing, and
16 therefore we have to look to the written terms of the option
17 itself. And, pursuant to the written terms of the option,
18 in paragraph 4 of Exhibit 3-C, he was not permitted to under
19 the written terms, to exercise any of the last 15000 -- any
20 of the options on the last 15,000 shares prior to April
21 1, 1965, which was approximately five months after his
22 employment was terminated.

23 Now, we would finally conclude that at no time
24 after the date upon which Mr. Guild's employment was termina-
25 ted, and up until -- and no time prior to 1967, when he in

1 fact tendered a check for \$100,000 odd dollars, in payment
2 of stock, did Mr. Guild comply with the technical terms of
3 the option, I would point out to the Court in Exhibit 3-C
4 again, paragraph 6, where the option specifically sets forth
5 a manner of exercise, and that manner of exercise is that
6 he shall give written notice of such election to the company,
7 and its principal office, accompanied by payment to the
8 company in cash or certified bank cashier's check, etc.,
9 and that he will agree with the company that he is acquiring
10 the shares for investment purposes. In other words without
11 the intent to distribute that the securities laws require.

12 At no time does the evidence show that Mr.
13 Guild complied with the strict terms of the written option,
14 of paragraph 6, if the Court considers that to be a relevant
15 consideration.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Gardner. Mr.
18 Rosenzweig, would you like to make an opening statement?

19 MR. ROSENZWIEG: If the Court please, I have
20 very little quarrel with what Mr. Gardner has read to the
21 Court out of the agreements which are relevant to this
22 case.

23 However, I would direct the Court's attention
24 to Section 5 of joint Exhibit 3-C, that being the option
25 agreement, and that is the section which deals with the

1 rights of Mr. Guild to exercise option after the termination
2 of his employment.

3 The critical element is not when stock is
4 delivered, pursuant to the exercise of an option, but rather
5 when the exercise takes place.

6 Now, in this case, after Mr. Guild was summarily
7 discharged by Logan, in November of 1964, Mr. Guild made
8 demands upon Logan that they deliver to him the shares of
9 stock to which he felt himself entitled under the stock
10 option agreement. Mr. Guild was ready, willing and able
11 then to pay for the stock. His demand that the stock be
12 delivered to him was rejected. And, it was on account of
13 such rejection that the law suit was brought.

14 Now, if the complaint in the law suit is considered,
15 the Court will appreciate that the primary thrust of that
16 lawsuit was to enforce his rights under the option, so
17 that even if Mr. Guild had not, as he had done, directly
18 requested that the stock be issued to him pursuant to the
19 stock option agreement, the institution of the lawsuit by
20 itself would constitute the effort to exercise the option
21 on Mr. Guild's part.

22 Obviously the law does not require one to perform
23 futile acts, and Mr. Gardner has said that there was no
24 technical compliance by Mr. Guild with the requirement of
25 the option agreement. In that, he did not tender a certified

1 check and in that he did not tender a written notice. Mr.
2 Guild will testify to -- to his efforts to obtain the stock,
3 and to the rejection of those efforts, the refusal by Logan
4 to issue the stock to him. In that posture, the law does
5 not call upon one to perform needless acts. In fact, the
6 best proof is that the lawsuit started in January, 1965,
7 within three months of the termination of Mr. Guild's
8 employment, but notwithstanding that Logan was operating under
9 the duress of the lawsuit, the final resolution did not
10 come until 1967, towards the end of 1967.

11 We will further demonstrate that when Mr.
12 Guild exercised his option as to 10,000 shares of the
13 company's stock, as to which there is no issue in this
14 case, he was not required to pay by certified funds, nor
15 so far as Mr. Guild can recall, was he ever required to
16 submit the formal notice.

17 Now, then, accepting the fact that Mr. Guild
18 endeavored to exercise his option within three months of
19 the termination of his employment, the fact that that right
20 was ultimately recognized by the settlement which was made,
21 and it was so recognized, and I shall demonstrate it, relates
22 the delivery of the stock back to the date of Mr. Guild's
23 demand, therefore. And, at most, what we then have is a
24 mere modification -- a -- I'm sorry, we have merely an
25 acceleration of the time of exercise, and under Section

1 425 (h) (3) (C) of the Code, a mere acceleration of the
2 time of exercise of a restricted or a qualified option,
3 does not constitute a modification of the option, and thus
4 the benefits afforded the optionee under Section 421 (a)
5 of the Code are available to him.

6 Now, Mr. Guild had been employed by Logan at
7 a salary plus an expense allowance, which aggregated
8 \$50,000.00, or \$55,000.00. The number is really insigni-
9 ficant. After Mr. Guild's employment was summarily termi-
10 nated by Logan, he sought other employment, which he
11 speedily obtained, and in the following year he received
12 from his new employer, and it is so stipulated, a great
13 amount than he would ever have been entitled under the
14 applicable law of the State of New York, to receive as
15 damages for the breach of an employment agreement.

16 That is to say as we will demonstrate by
17 proof of New York law which is applicable, the expense
18 allowance, the non-accountable expense allowance, is not
19 an element of compensation for which damages may be obtained
20 following a wrongful breach. In fact, Your Honor, in the
21 stipulated Exhibits, the memorandum of counsel for Logan,
22 on its motion for summary judgment sets forth the authority
23 on that position. The case is Crabtree against Elizabeth
24 Arden.

25 Therefore, when Mr. Guild received \$46,000.00

1 from his new employer, in the last year in what would have
2 been the last year of his employment contract with Logan,
3 he then had no money damages, in any event. So, we come
4 then to the fact that Logan transferred 6500 shares of its
5 common stock to Mr. Guild, and our position is, and the
6 facts bear out the contention that such transfer can only
7 have been in recognition of Mr. Guild's rights under his
8 option agreement.

9 In fact, Your Honor, Exhibit 13-M is specific on
10 the point, because in Exhibit 13-M, Logan concedes that
11 you, Mr. Guild, attempted further to exercise the option
12 with respect to the remaining 15,000 shares, but your right
13 to do so was questioned by us. And, then the next para-
14 graph, we do hereby recognize your right to 6500 shares
15 of our stock upon the terms and conditions of the option.

16 So, there can be no clearer proof but that Logan
17 in the settlement was recognizing Guild's efforts thereto-
18 fore made to exercise the option, and were transferring
19 the stock to him in accordance therewith.

20 We contend further, Your Honor, that in any
21 event, regardless of the applicability of Section 421, of
22 the Code, the contract itself in Mr. Guild's hands was a
23 capital asset, and that it -- and that when on the settle-
24 ment from which he received the 6500 shares of Logan stock,
25 he surrendered his rights or extinguished his rights to

1 any further claims under that contract, he did so and that
2 the transaction then constituted a capital transaction upon
3 which again, if at all recognizable to Mr. Guild is recog-
4 nizable to him as a capital gain.

5 We also, believe, Your Honor, that under settled
6 principles the character of the proceeds of settlement,
7 the property which Mr. Guild received must take on the
8 attributes of the claim, the claim which gave rise to the
9 settlement. That since such claim related to a non-salary
10 item, a non-compensation item, the proceeds of that claim ---
11 the proceeds of the settlement, the 6500 shares must be
12 treated in Mr. Guild's hands as other than ordinary income,
13 other than his compensation received from Logan. This is,
14 as I say, borne out by the fact that he had no compensation
15 claim, since he had already received more in pay from his
16 subsequent employer than he was ever entitled to receive
17 from Logan for breach of the employment agreement.

18 In short, Your Honor, the -- in the posture of
19 this case, on the documentary evidence, and on the stipulation
20 of facts, there would seem to be no question but that the
21 -- that Guild enforced his rights under the option agreement,
22 that by such exercise, even though prior in time to the
23 dates specified in the option, it is nonetheless an exercise
24 which satisfies the requirements of Section 421 (a), since
25 only the time of exercise was accelerated and such acceleration

1 does not constitute or prohibit a modification.

2 THE COURT: Thank you, Mr. Rosenzweig, Mr.
3 Mendelson, do you wish to make an opening statement?

4 MR. MENDELSON: I will make it very brief,
5 Your Honor. Thank you.

6 I think both Petitioners have thoroughly outlined
7 the issues that are presented to the Court. Let me just
8 say this at this point that the Respondent issued statutory
9 notices of deficiency to both Petitioners with respect to
10 this one issue.

11 It is the Respondent's position that Logan's
12 treatment of this item is the correct treatment of the
13 item, and not Guild's. But, the notice was issued to
14 Logan as a protective measure because if the Court finds
15 in Mr. Guild's favor on the Section 421, 424 issue, that
16 the receipt of the 6500 shares by Mr. Guild was a transfer
17 pursuant to the exercise of a restricted stock option,
18 the REspondent wanted to be able to take the correlative
19 position under 421 and 424 that Logan is not entitled to
20 a deduction. That's the only reason Logan is in Court on
21 that issue, because the Respondent is litigating with Mr.
22 Guild.

23 On the other hand I don't want it to seem that
24 a large New York Stock Exchange Corporation and the United
25 States Government is picking on one individual taxpayer.

1 It is just that we are looking for the correct tax conse-
2 quences of this transaction, and it is our position -- our
3 position happens to coincide with Logan's.

4 I would like to respond for a moment to Mr.
5 Rosenzweig's statements with respect to state law on the
6 matter of compensation, because I don't think that what
7 New York State says to be compensation or not compensation,
8 is relevant in our determination here. We are looking
9 to federal tax law concepts of what compensation is, and
10 it is our position that in the case law which we cite on
11 brief will show that the origin of Mr. Guild's claims
12 against Logan, resulted from his employment relationship,
13 and consequently any monies received by him are under
14 federal tax law principles compensation, although under
15 the State law of the State of New York, he may not have
16 had a claim for compensation.

17 One issue that is raised in Mr. Guild's peti-
18 tion is the matter of the deductibility of attorney's fees,
19 which was measured by Mr. Guild's transfer of 388 shares
20 of the -- out of the 6500 shares of Logan stock which he
21 received to his attorneys.

22 If the Court will note, there is no mention of
23 attorney's fees or any breakout of those 388 shares in the
24 notice of deficiency, because of the main position taken
25 by the REspondent that all of the amounts are includable

1 in gross income. Accordingly, I would ask the Court's
2 permission, and I don't think that it is an element of
3 surprise because clearly the Petitioner has raised it in
4 his petition, that should the Court find that the 6500 --
5 well, in any event, should the Court require, we would
6 ask for leave to amend out pleadings with respect to the
7 attorney's fees issue if the Court deems it to be necessary.

8 I am not certain that it is, but it may be
9 required as a result of the Court's opinion.

10 That's basically all that I have to say, Your
11 Honor. I have no -- as I have indicated in chambers, I
12 have no witnesses to call on behalf of the Respondent.

13 THE COURT: Thank you, Mr. Mendelson.

14 MR. MENDELSON: Thank you.

15 THE COURT: Mr. Rosenzweig, you may call your
16 first witness.

17 MR. ROSENZWIEG: If the Court please, just before
18 I call Mr. Guild, I believe without objection of counsel for
19 Logan and counsel for the Government, I would like to offer
20 a -- a substitute joint Exhibit 3-C for the one which
21 appears in the stipulation --

22 THE COURT: All right.

23 MR. ROSENZWIEG: For the one which is annexed
24 to the stipulation, for some reason which I don't know,
25 the option price was omitted from the document which has been

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1 filed.

2 THE COURT: Well, the date is omitted too --

3 MR. ROSENZWIEG: Yes.

4 THE COURT: Fine, thank you. It will be so
5 received.

6 MR. ROSENZWIEG: Again, without objection, of
7 opposing counsel, I would like to offer in evidence a
8 letter addressed to me by the Chemical Bank and dated
9 September 25, 1973.

10 THE COURT: Is this going to be the petitioner's
11 Exhibit?

12 MR. ROSENZWIEG: This will be Petitioner's
13 14, but I suppose that it ought to be in some way --

14 THE COURT: Is it going to be a joint --

15 MR. ROSENZWIEG: Identified as Guild's 14.

16 THE COURT: Yes.

17 (Pause.)

18 MR. ROSENZWIEG: And, again, without objection --

19 THE COURT: Does the Clerk have that marked,
20 do we have a copy of that to mark?

21 MR. ROSENZWIEG: I thought that I had handed him
22 one.

23 (Pause.)

24 THE CLERK: Petitioner's Exhibit 14 is marked
25 for identification.

1 THE COURT: Any objection to it being received
2 into evidence, gentlemen?

3 MR. MENDELSON: No objection, YOur Honor.

4 MR. GARDNER: No objection.

5 THE COURT: All right, so received.

6 MR. ROSENZWIEG: And, again I would like
7 to offer Jonathan Logan, Incorporated annual report for
8 the year 1967, in connection with the Exhibit, Your Honor,
9 the only portions which are relevant are the financial
10 statements which appear in that report, and I have copies
11 of -- photocopies of such financials, and I ask leave to
12 submit the financials instead of the full report.

13 (Pause.)

14 THE COURT: It will be Guild's Exhibit 15,
15 right?

16 MR. GARDNER: My only objection would be on
17 the grounds of relevancy and materiality, Your Honor, other
18 than that I have no objection.

19 MR. ROSENZWIEG: On that issue, Your Honor,
20 if I may --

21 THE COURT: Yes.

22 MR. ROSENZWIEG: Taken together with Guild
23 Exhibit 14, I believe the offer -- that the evidence offered
24 is clearly relevant, and I would like to point out that
25 in Guild Exhibit 14, the -- Guild's transfer agent, the

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1 Chemical Bank states that the transfer was issued against
2 Jonathan Logan's treasury stock, that is the -- the first
3 line of the second paragraph.

4 And, in Exhibit 15 for identification, at this
5 moment, it maybe so marked --

6 THE CLERK: Petitioner's Exhibit 15 is marked
7 for identification.

8 MR. ROSENZWIEG: And, having been so marked,
9 Exhibit 15 discloses that in the -- that in Logan's certified
10 financials, which are Exhibit 15, in note -- note 7 thereto,
11 wherein the accountants are reconciling the changes of
12 outstanding shares of the company, in sub-paragraph B of
13 note 7, they note the issuance of 6500 shares of treasury
14 shares issued upon exercise of stock option, which the same
15 -- that being the only charge to treasury shares in that year,
16 ties in with Guild's Exhibit 14, and establishes that in
17 Logan's books, the transfer of 6500 shares was made as upon
18 Mr. Guild's exercise of his stock options.

19 MR. MENDELSON: Your Honor, if I may, it is
20 kind of a funny case, it's three-sided, but I guess it is
21 more appropriate for me to raise an objection to this Exhibit
22 than Mr. Gardner, although certainly I don't want to preclude
23 him from doing so.

24 The Respondent is going to object on the grounds
25 of relevancy also, and further if Your Honor will note in

1 the stipulation of facts, there is a reservation that the
2 parties reserve the right to question the truth of entries
3 on those Exhibits, and at least as to the Petitioner's
4 Exhibit 15 for identification, if the Court were to admit
5 it over relevancy objections, the Respondent certainly would
6 want to be able to question the truth and validity of --
7 of the bald assertion in that note that this is issued upon
8 the exercise of a stock option.

9 Of course, the Court may find that it is, and it
10 still may not be relevant because it may not be the exercise
11 of a restricted stock option. However, this is hearsay,
12 certainly as to the Respondent, if not to Logan, and we'll
13 object on the grounds of hearsay and relevancy, reserving
14 if those grounds are denied the right to object -- to
15 question the truth of the statement.

16 THE COURT: May I see it please?

17 MR. GARDNER: I won't add to Mr. Mendelson's
18 objections.

19 MR. ROSENZWIEG: I believe -- now, if Your Honor
20 please?

21 THE COURT: Yes.

22 MR. ROSENZWIEG: There -- there are different
23 considerations involved. So far as this financial reflecting
24 accurately what is -- what was recorded on the books of
25 Jonathan Logan, the objection can be made I guess that I

1 don't have anyone in Court from Clarence Rainess and Com-
2 pany who are the certified public accountant, who certified
3 to this. And, I suppose that it wouldn't even be necessary
4 for me to produce Clarence Rainess, I would subpoena the
5 books of Jonathan Logan.

6 So, I think that Mr. Mendelson's objection of
7 hearsay is -- is really a frivolous objection at this point,
8 because I am prepared if need be to subpoena the books, and
9 bring them in, and I am certain, and I would doubt that Mr.
10 Gardner would seriously assert that the accountants wrote
11 something in there in their report which was not taken from
12 the books.

13 So, we have got to separate out the question
14 of fact from the question of law as to what inferences may
15 be drawn from those facts.

16 Now, on the question of fact, I submit, that the
17 facts are clearly established by the -- by the offer made
18 of Exhibit 15 for identification, that Logan so charged
19 its treasury account for 6500 shares, and that the appro-
20 priate entry stated that the shares were issued upon the
21 exercise of stock option, and as I said that tied together
22 with the Exhibit 14 clearly establishes them to be shares
23 which were issued ^{by} to ~~Mr.~~ Logan -- to Mr. Guild.

24 Now, Mr. Mendelson is of course free to -- to
25 accept the fact that it was so reported by Logan, and to make

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1 any contentions he wants as to whether or not the issuance
2 of shares pursuant to the exercise of stock option satisfies
3 the requirements of Section 421 (a) of the Code, and that
4 I am sure that he will do on brief, in any event. So, I
5 see that there is no objection whatever to the relevancy
6 of this exhibit -- of this exhibit.

7 THE COURT: I'm going to admit Exhibit 15 into
8 evidence, being very lenient.

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9 (Whereupon, Exhibit 15 was received into
10 evidence.)

11 MR. ROSENZWIEG: Pardon?

12 THE COURT: I said being very lenient, because
13 technically you haven't laid the proper foundation, but I
14 am going to admit it into evidence.

15 MR. ROSENZWIEG: If -- If -- all right, Your
16 Honor.

17 THE COURT: That's all right.

18 MR. ROSENZWIEG: But there had been prior
19 discussions on this subject --

20 THE COURT: It's admitted.

21 MR. ROSENZWIEG: And, the objections came to
22 me as something of a surprise.

23 THE COURT: Do you have any other additional
24 Exhibits?

25 MR. ROSENZWIEG: One more that I will intro-

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1 duce through the witness, Your Honor.

2 THE COURT: All right.

3 MR. ROSENZWIEG: Now, I will call Mr. Irwin
4 C. Guild.

5 THE CLERK: You do solemnly swear that the
6 testimony you are about to give to the Court in this case,
7 shall be the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated, sir, and state
11 your name and address for the record, please.

12 THE WITNESS: Irwin C. Guild, G-u-i-l-d, 875
13 5th Avenue, New York City.

14 I R W I N C. G U I L D, called as a witness on behalf
15 of the Petitioner, having been duly sworn, took the stand,
16 and testified as follows:

17 DIRECT EXAMINATION BY

18 MR. ROSENZWIEG:

19 Q Mr. Guild, prior to September of 1963, where
20 were you employed?

21 A I was employed as the President of one of Leslie
22 firms -- Leslie Faye Dress Concern.

23 Q And, will you please describe Leslie FAYE briefly
24 for the Court?

25 A Well, Leslie Faye today is a public concern, a

1 conglomerate with various divisions, most of them -- I would
2 say all of them practically are ready to wear.

3 Q And, you functioned in the sales department,
4 is that correct, sir?

5 A Well, I was the President of one of their
6 divisions called Leslie Pomer.

7 Q And, what was that division -- division's
8 business?

9 MR. MENDELSON: Your Honor, if I may, I didn't
10 object initially because I assumed that Mr. Rosenzweig
11 was laying briefly a foundation of Mr. Guild's experience
12 in the field, but I think that if he goes into detail as
13 to what Mr. Guild may have done before he came with Logan,
14 it is irrelevant to what we are trying to determine here.

15 THE COURT: Mr. Rosenzweig will make it brief.

16 MR. ROSENZWIEG: I -- I was just trying to pro-
17 vide a brief background for Your Honor, and that was all.
18 I have-- ah --

19 BY MR. ROSENZWIEG: (Resuming)

20 Q Was Leslie Faye engaged in much the same type
21 of business as Jonathan Logan?

22 A I would say that we were competitors, the same
23 field.

24 Q And, it is a fact is it not, Mr. Guild, that
25 in September of 1963 you were induced to go to work for

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1 Logan?

2 A That's true.

3 Q All right. And, what did you do at Logan?

4 A Well, I was in charge of I would say all selling,
5 the front man, sales, roadman, anything to do with selling
6 the merchandise, presenting the merchandise, and merchandizing
7 the merchandise itself. Practically everything but produc-
8 tion.

9 Q And, that was however confined to the R & K
10 Originals Division, of Logan?

11 A That's right.

12 Q Now, what was the volume of business if you recall
13 that was done by the R & K Originals Division during 1964,
14 from January 1, of that year until the termination of your
15 employment in November?

16 MR. GARDNER: Your Honor, excuse me if I may,
17 this line of questioning seems to be going beyond laying
18 a quick predicate to Mr. Guild's experience in this area,
19 and I would object that it is entirely irrelevant and
20 immaterial.

21 MR. ROSENZWIEG: Your Honor, it is the last question
22 on the subject.

23 MR. GARNDER: I'll withdraw the objection.

24 THE COURT: All right.

25 MR. ROSENZWIEG: All right.

1 THE COURT: You may answer. 130a

2 THE WITNESS: I didn't get the question.

3 BY MR. ROSENZWIEG: (Resuming)

4 Q I asked you if you could tell the Court what
5 the volume of sales was of the R & K Originals Division
6 during so much of the year 1964 as you were employed by
7 JOnathan Logan?

8 A I would say, we opened another division under
9 R & K, I would say that it was approximately \$30,000,000.00.

10 Q Now, did you -- do you recall the events which
11 happened in or about the first or second week of November,
12 1964 with reference to your employment?

13 A Well, very vividly.

14 Q Well, will you please tell the Court what
15 happened?

16 A I was told suddenly by Mr. Manny Eagle --

17 Q Excuse me, now, who is Mr. Manny Eagle?

18 A I was going to say that he was a Vice President
19 of R & K, I think that that was his title, that I was
20 fired. I couldn't believe it, and I called up Mr. Dave
21 Schwartz.

22 Q And, who was Mr. Dave Schwartz?

23 A Dave Schwartz was Chairman of the Board of
24 Jonathan Logan. He told me to come over, and I came over,
25 and he said, you are fired. There was never any discussion.

1 Q Incidentally, where -- where is this, is this
2 in New York City?

3 A Well, R & K was at 1400 Broadway, and Jonathan
4 Logan was at 1407 Broadway at that time.

5 Q And, that was where your employment agreements
6 were executed, is that where your agreements with Jonathan
7 Logan were executed?

8 A I don't know what you mean, executed.

9 Q Signed?

10 A Where they were signed, if I recall, they were
11 signed in a lawyer's office of of Wean and Wean (phonetics).

12 Q Is that in New York City?

13 A Right.

14 Q And, your services were performed in New York
15 City?

16 A Correct.

17 Q All right, now, will you please continue?

18 A And, as I said, he told me just summarily, that
19 I was dismissed, that I was fired. And, there was no
20 discussion, and I then said to him, what about my stock
21 options, which I would like to pick up. And, he said any-
22 thing that's entitled to you, you will receive. And, he
23 suggested that I get in touch with his son Richard Schwartz,
24 who was President of Jonathan Logan.

25 Q Did you get in touch with Mr. Richard Schwartz?

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1 A I think that I called Richard the following
2 morning, it was in the evening when this happened, and I
3 was upset, and I spoke to Richard the following day, and
4 Richard said to come over and we will discuss it.

5 Q Now, what did you say to Mr. Richard Schwartz
6 in that meeting?

7 A I told him that I was shocked, and he said
8 that's the way it was. And, I said well, what about what's
9 due me, and the main thing that was due me was the stock
10 options. And, he said I won't give you anything, you will
11 have to sue.

12 Q Did you specifically request Mr. Schwartz to
13 -- to transfer to you 15,000 shares of Jonathan Logan
14 common stock?

15 A I did. I said I would like to get the shares,
16 I was ready and able to pay for it all at once, and I repeat
17 that Richard said to me, we are not going to give you any-
18 thing, go and sue us.

19 Q And, was that substantially all that transpired
20 at that meeting?

21 A That was all that was said.

22 Q Did you thereafter engage counsel?

23 A After that I did engage counsel, and I explained
24 it to him, and I left it in his hands to take care of the
25 matter.

1 Q And, such counsel was --

2 A Epstein and Furman, at I think it is 363 Madison,
3 I'm not sure.

4 Q Now, the evidence in this case discloses that an
5 action was instituted on your behalf against Logan on Janu-
6 ary 15, 1965. Between the date of your discussion with
7 Mr. Richard Schwartz which you have just described and
8 January 15, 1965, did you have any other conversation with
9 Mr. Schwartz?

10 A I'm positive that we had several conversations.

11 Q And, what was the substance and the thrust of
12 those conversations?

13 A Well, the substance was, how we can settle without
14 going to court.

15 Q And, did you in the course of those conversations
16 insist upon your rights -- your entitlement to the Jonathan
17 Logan stock, which was subject to your option?

18 A That's correct, I wanted the 15,000 shares, which
19 was due me.

20 Q And, you made that clear to Mr. Schwartz?

21 A I made it clear to Mr. Schwartz several times.

22 Q And, were those requests honored?

23 A No.

24 THE COURT: When you say Mr. Schwartz, you mean
25 Mr. Richard Schwartz?

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1 MR. ROSENZWIEG: Mr. Richard Schwartz.

2 THE WITNESS: Mr. Richard Schwartz.

3 BY MR. ROSENZWIEG: (Resuming)

4 Q Now, then in 1964, Mr. Guild, you exercised
5 your options with respect to 10,000 shares of Jonathan
6 Logan common stock? That is correct, is it not, sir?

7 A That's right.

8 Q And, you paid for them, I assume?

9 A Correct.

10 MR. ROSENZWIEG: May I have this checked marked
11 for identification, please?

12 THE CLERK: Petitioner's Exhibit 16 marked for
13 identification.

14 MR. ROSENZWIEG: May I substitute a copy, please,
15 if Your Honor --

16 THE COURT: Yes, you may.

17 (Pause.)

18 BY MR. ROSENZWIEG: (Resuming)

19 Q Now, Mr. Guild, looking at the face and reverse
20 of Exhibit 16 for identification, will you please tell me
21 and tell the Court whether or not that is the check which
22 you issued to Jonathan Logan in payment of the -- for the
23 10,000 shares which -- as to which you exercise of option
24 was recognized in 1964?

25 A That's the check. It is my handwriting.

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1 MR. ROSENZWIEG: I'll offer it. There are two
2 sides to the Exhibit, Your Honor, showing the face and
3 the reverse of the check.

4 THE COURT: Any objections? Mr. Gardner or
5 Mr. Mendelson?

6 MR. MENDELSON: No, I have no objections.

7 MR. GARDNER: I have no objections.

8 THE COURT: All right, then Guild Exhibit 16
9 will be received into evidence.

10 BY MR. ROSENZWIEG: (Resuming)

11 Q Now, when you exercised your option as to 10,000
12 shares in 1964, do you recollect whether or not you were
13 required to give Logan written notice of your intention to
14 affect such exercise?

15 A I honestly don't recollect whether I did or
16 didn't.

17 MR. ROSENZWIEG: I have no further questions,
18 Your Honor.

19 THE COURT: Mr. Gardner, cross examination.

20 CROSS EXAMINATION BY

21 MR. GARDNER: (Logan)

22 Q I have only one question, Mr. Guild, at the time
23 that you spoke to Mr. Richard Schwartz, approximately two
24 days after your appointment was terminated, and you came
25 to his office --

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1 A I say the next day.

2 Q The next day, would you state again for the Court
3 what Mr. Richard Schwartz said to you?

4 A Well, --

5 Q To the best of your recollection?

6 A Well, Mr. Richard Schwartz told me that I was
7 fired.

8 Q That you were fired, and I think you said you
9 -- you had no rights or further rights, and you would have
10 to sue, is that --

11 A That's correct.

12 Q I think that that is what you said.

13 A No, he said that after I asked him what about
14 my shares of stock, and my contract, the furtherance of my
15 contract. He said you have got to sue to collect anything.

16 Q In other words he made it clear to you that as
17 far as he was concerned, you had no further rights as far
18 as the company was concerned?

19 A I don't know whether he -- what he was going to
20 concerned, or what he was going to construe, all he said
21 to me, was that I would have to sue.

22 Q That you would have to sue?

23 A That's all.

24 Q Did you at the time that you went to see Mr.
25 Richard Schwartz have in your possession either a certified

1 check or cash in the amount of approximately \$225,000.00?

2 A I could have gotten it, I could have signed
3 a check for \$200,000.00 --

4 Q But did you come to the office with either the
5 cash or the check?

6 A I had a blank check in my pocket, ready to sign.

7 MR. GARDNER: Thank you, Mr. Guild.

8 THE COURT: Mr. Mendelson, any questions --
9 any cross examination?

10 MR. MENDELSON: No, I have no questions.

11 THE COURT: Any redirect, Mr. Rosenzweig?

12 MR. ROSENZWIEG: No, Your Honor.

13 THE COURT: Thank you, Mr. Guild, you may be
14 excused.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Do you have any further witnesses?

18 MR. ROSENZWIEG: I have no further witnesses,
19 Your Honor.

20 THE COURT: Mr. Gardner, do you --

21 MR. GARDNER: Your Honor, in the interests of
22 time, unless Your Honor feels that there is any question
23 of fact in your mind, we do not -- we don't think it is
24 necessary to call Mr. Schwartz to the stand, because essentially
25 we don't conflict with anything that Mr. Guild has said.

1 THE COURT: Thank you. Mr. Mendelson?

2 MR. MENDELSON: Your Honor, as I have said, the
3 Respondent has no witnesses, and if the two parties to that
4 transaction have no conflict we certainly can't dispute it.

5 THE COURT: Gentlemen, we have the question of
6 briefs. I'm going to require simultaneous briefs. When
7 would you --

8 MR. MENDELSON: Pardon me, Your Honor, I'm
9 terribly sorry, excuse me. If I may beg the Court's indul-
10 gence, my --

11 THE COURT: Yes.

12 MR. MENDELSON: My mind is not with me today.
13 I would like to ask Mr. Guild several questions if I may
14 have counsel's -- not on this issue, not on the issue of
15 the stock --

16 THE COURT: I understand.

17 MR. MENDELSON: I'm terribly sorry.

18 THE COURT: Mr. Guild, please take the stand
19 again, and I remind you that you are under oath, you don't
20 have to be sworn in again.

21 CROSS EXAMINATION BY

22 MR. MENDELSON: (Respondent)

23 Q I'm sorry, Mr. Guild, to take you off the hot
24 seat, and then call you back, it was not intentional.

25 After the settlement was affected with Jonathan

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1 LOgan, and you paid them \$15.46 a share, and received 6500
2 shares, you then transferred or caused to be transferred
3 388 shares to your attorneys, is that correct?

4 A I don't know about the exact amount, but there
5 was a certain fee that was in my agreement.

6 Q All right.

7 A Approximately I would say that that was true.

8 Q I would like to ask you a couple of questions
9 about your understanding with your attorneys. How was
10 their fee to be paid, was that determined in advance of the
11 litigation?

12 A I honestly can't recall, I imagine it is -- it
13 was determined in advance. I think that I did sign an
14 agreement with them

15 Q Do you recall whether that agreement was for
16 a specific dollar amount?

17 A No.

18 Q No, you don't recall, or no it was not?

19 A I do not recall what it was for, but might I just
20 say that why don't we get the -- what are you going to ask
21 me questions whether I do not know or do not recall, if you
22 want it just get the attorneys' contract with me, I think
23 that that is easier.

24 Q Do you have a copy of the contract?

25 MR. ROSENZWIEG: I may point out, Mr. Mendelson,

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1 if I may, I think that the subject is covered by paragraph
2 17 of the stipulation of facts.

3 THE COURT: It is.

4 MR. MENDELSON: I don't think that it is, not
5 completely. And, my only --

6 THE COURT: All right, what are you interested in
7 in that Mr. Mendelson?

8 MR. MENDELSON: It reads -- paragraph 17 reads
9 a contingent retainer agreement, what I was interested in
10 in knowing from Mr. Guild, if he knew was whether that con-
11 tingent agreement related to a number of shares based upon
12 the number of shares which he received from Logan, or rather
13 was a dollar amount.

14 THE COURT: The next sentence mentions an agreement,
15 well do you have a copy of that agreement that Mr. Guild
16 had with his attorney?

17 MR. ROSENZWIEG: I'm going to see if I have it,
18 Your Honor.

19 MR. MENDELSON: If counsel doesn't have a copy
20 of that agreement, I did not serve a notice to produce on
21 counsel, and perhaps we might hold the record open to have
22 that agreement submitted as an Exhibit?

23 MR. ROSENZWIEG: Perhaps the counsel for the
24 Government and for Jonathan Logan will accept my assurance
25 that the fee was based upon the value of the recovered.

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1 MR. MENDELSON: Well, I would like to see the
2 -- the agreement. I had assumed perhaps without enough
3 substance --

4 THE COURT: You don't have the agreement with
5 you, Mr. Rosenzweig?

6 MR. MENDELSON: That since it was in the petition,
7 the deductibility of the legal fees --

8 MR. ROSENZWIEG: If Your Honor would bear with
9 me, I -- I believe that it is in -- in another -- we don't
10 have the other file -- it is in one other file which I do
11 not have with me in a correspondence file.

12 MR. MENDELSON: May we keep the record open
13 for that Exhibit, Your Honor? Perhaps Mr. Rosenzweig and
14 I can enter into a stipulation with respect to this parti-
15 cular question?

16 THE COURT: I will keep the record open for
17 the -- I would like to see a copy of the agreement -- for
18 a submission of the copy of the agreement, and any stipulation
19 that you two may enter into in connection therewith, so I
20 will keep the record open for that purpose.

21 MR. ROSENZWIEG: If I may point out, Your Honor,
22 of my recollection of the document, and I think that I am
23 correct, it refers in the opening sentence to discussions
24 of settlement which were then in progress between Mr. Guild's
25 counsel in the litigation and Logan's counsel.

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1 THE COURT: I see.

2 MR. ROSENZWIEG: I thought that the subject had
3 been adequately covered by the stipulation because it says
4 that such counsel became entitled under such agreement to
5 receive from Guild 388 shares, upon the payment of \$5,999.48.
6 And, I think that the multiplication would probably come out
7 to the \$15.46 --

8 THE COURT: What are you going to hope Mr.
9 Mendelson to prove -- we have got the value of the shares
10 in the paragraph below --

11 MR. MENDELSON: I'm -- I'm just not satisfied,
12 Your Honor, that paragraph 16 completely --

13 THE COURT: Seventeen?

14 MR. MENDELSON: Paragraph 17, excuse me, completely
15 reflects whether the fee to be paid to Mr. Guild's attorneys
16 was to be specifically 388 shares, whether it was to be
17 388 over 6500, which would be the ratio of the shares received,
18 or whether it was to be a dollar amount measured by the
19 spread value of those 388 shares. Any one of those three
20 possibilities could be --

21 THE COURT: Well, from some testimony or -- some
22 information I should say, that Mr. Rosenzweig gave it to us,
23 apparently it was to be a certain percentage of the amount
24 of the settlement affected, the dollar settlement affected,
25 which dollar amount apparently were reduced to 388 shares of

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1 Logan's common stock, what's going to be the difference,
2 because aren't you -- aren't you only concerned as to --
3 you have stipulated that aggregate fair market value of
4 the stock was \$22,116.00. The question is whether or not
5 Mr. Guild is entitled to deduct that as a legal fee. Now,
6 we aren't going to come up with any different figure when
7 we get to the agreement, are we?

8 MR. MENDELSON: No, not as to value, I don't
9 imagine so.

10 THE COURT: Well, then I am trying to figure
11 out in my mind what's the significance -- how it is provided,
12 the fact remains that he got -- he received from Guild 388
13 shares of Logan's common stock.

14 MR. MENDELSON: Well, one of the --

15 MR. ROSENZWIEG: If -- If I may, Mr. Mendelson,
16 I think that it is obvious that what counsel paid was \$15.46
17 per share. All right, the -- I'm not on the stand, Your
18 Honor, but --

19 THE COURT: Well, that's all right, I mean that's
20 all right.

21 MR. ROSENZWIEG: Quite simply, the agreement fixed
22 -- fixed the --

23 THE COURT: Counsel paid \$5,999.48, for something
24 that was worth \$22,116.00, that's what the stipulation
25 says.

1 MR. MENDELSON: I haven't any question as to that.
 2 Your Honor, my only point is that as a result of the issue
 3 raised in Mr. Guild's petition, as to the deductibility or
 4 not of his attorney's fees, it struck me in analyzing the
 5 issue, that it may be relevant as to whether he received
 6 or contracted -- or -- excuse me, whether the attorneys
 7 received or contracted to receive a specific amount in dollars,
 8 or number of shares. There may be a question here, and I
 9 would like to go into it in detail on brief, I am not fully
 10 prepared to do it orally right now. There may be a question
 11 as to an allocation between deductible expenses and capital
 12 additions to the basis of the shares, and it may be relevant
 13 on that, whether the amounts received were in dollars or --
 14 or the contract was for dollars, or the contract was for
 15 shares. That's the only reason that I seek to have the
 16 record open. I am not disputing the authenticity of the
 17 document or any content therein.

18 THE COURT: All right, I see your point. I'll
 19 keep the record open for the submission of the agreement.

20 MR. MENDELSON: Thank you.

21 THE COURT: If you can stipulate to anything --
 22 as to it, or what -- or stipulate anything regarding it with
 23 Mr. Rosenzweig, then you may do so.

24 MR. MENDELSON: Fine, thank you, Your Honor.

25 THE COURT: All right.

1 MR. MENDELSON: I have no further questions of
2 Mr. Guild.

3 MR. ROSENZWIEG: And my understanding is that
4 I will produce the -- the relevant documents, and offer
5 them to counsel, and --

6 THE COURT: Yes, you will get a chance to
7 examine them --

8 MR. ROSENZWIEG: And, we'll see if they wish to
9 put them in.

10 THE COURT: Yes. That's right.

11 MR. MENDELSON: All right, fine, thank you.
12 Again, I'm sorry, Your Honor.

13 THE COURT: Thank you. Any further questions
14 by anybody, of Mr. Guild?

15 MR. GARDNER: I have none, Your Honor.

16 THE COURT: Mr. Guild, you may be excused.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Any further witnesses or evidence
20 before we get the brief dates? Now, I was indicating that
21 I will require simultaneous briefs, both the original brief
22 and the reply briefs, now what is your desires as to the
23 your briefs, you know the rules of the Court, and I am also
24 cognizant that holidays are coming up, for some of us?

25 MR. MENDELSON: I assume that 45 days would be

1 approximately between Christmas and New Years, so that is
2 an inconvenient time I think for everyone. Maybe sixty
3 days would be --

4 MR. GARDNER: Sixty days would be fine, Your
5 Honor.

6 THE COURT: How about you, Mr. Rosenzweig?

7 MR. ROSENWIEG: That would be perfectly satis-
8 factory, Your Honor.

9 THE COURT: All right, then the briefs will be
10 due sixty days from today, what's that, Mr. Clerk?

11 THE CLERK: January 15th, 1974.

12 THE COURT: January 15th, 1974, and reply briefs
13 would be due simultaneously thirty days thereafter?

14 THE CLERK: February 14th.

15 THE COURT: Are thirty days enough for the reply
16 brief?

17 MR. ROSENZWIEG: It certainly should be, Your
18 Honor.

19 MR. MENDELSON: It should be.

20 THE COURT: All right, fine. Thank you, thirty
21 days thereafter, February 14th, 1974.

22 Again I want to thank the parties for the excellence
23 of their trial memorandum and stipulation and Exhibits. It
24 is all very helpful. I enjoyed hearing the case very
25 much. It is an interesting question, and I will look forward

1 to working upon it in the months to come, and this concludes
2 this session of the Newark calendar in the United States Tax
3 Court.

4 MR. ROSENZWIEG: Thank you, Your Honor.

5 THE COURT: Thank you.

6 THE CLERK: Please rise.

7 (Whereupon, the hearing in the above was
8 adjourned at 11:15 as described above.)
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UNITED STATES TAX COURT

Certificate of TranscriberDocket No. 8218-72 Name: Jonathan Logan, Inc., et al

The foregoing pages, numbers 1 through 46
inclusive, are the true, accurate and complete transcript
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by Ann Chumbley on November 16, 1973
in the United States Tax Court located in NEWARK, NEW JERSEY
, in accordance with the applicable
provisions of the current reporting contract of the Court
under which I have performed my duties as transcriber.

Gail Vallee
(Name) GAIL VALLEE

December 1, 1973
(Date)

Supplemental Stipulation of Facts

JONATHAN LOGAN, INC.,)

Petitioner,)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 8218-72

IRWIN C. GUILD AND BERNICE GUILD,)

Petitioners,)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 8284-72

SUPPLEMENTAL STIPULATION OF FACTS

The parties hereby stipulate that for the purpose of these cases, the following facts may be accepted as true.

19. The contingent fee agreement between Guild and his counsel during the negotiations with Logan provided in relevant part that counsel would receive a retainer of \$5,000.00, plus 10% of any recovery in excess of 2,500 shares at the option price after subtracting the original \$5,000.00 retainer from the total recovery.

20. The number of shares transferred by Guild to his then counsel was computed as follows:

150 w

Market price Friday, November 17, 1967	\$57.00
Less: Option price	15.46
Difference	<u>\$41.54</u>

\$5000 retainer
= 121 shares
\$41.50/share

Total recovery	6500
Less: 2500 share base	2500
	<u>4000</u>
Less: 121 shares	121
	<u>3879</u>
10%	= 388 shares

/s/ Elias Rosenzweig

ELIAS ROSENZWEIG
Counsel for Irwin C. Guild and
Bernice Guild

/s/ Stephen Gardner

STEPHEN GARDNER
Counsel for Jonathan Logan, Inc.

/s/ Meade Whitaker JJH

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

UNITED STATES COURT OF APPEALS
"FOR THE SECOND" CIRCUIT

IRWIN C. GUILD AND BERNICE GUILD
APPELLANTS-CROSS-APPELLEES

V.
COMMISSIONER OF INTERNAL REVENUE
APPELLEE-CROSS-APPELLANT

JONATHAN LOGAN, INC.

COMMISSIONER OF INTERNAL REVENUE
APPELLEE
APPELLANT

STATE OF NEW YORK }
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK }

KENNETH A. POGANIL, being duly sworn, deposes and
says, that he is over 18 years of age. That on the 3RD day of
NOVEMBER, 1975, he served TWO COPIES of
the attached JOINT APPENDIX on
the attorney for the APPELLEE-CROSS-APPELLANT
(NO. 75-4123); APPELLANT (NO. 75-4201)
herein by depositing the same, properly enclosed in a securely sealed

post-paid wrapper , in a U. S. Post Office at 90 Church Street, New

York City, directed to said attorney at ASSISTANT ATTY.
GEN. TAX DIVISION, DEPT. OF JUSTICE, WASH.
D.C. 20530 - ATT. GEORGE WOLF, ESQ.

this being the place where HE maintain an offices for the
regular transaction of business, and the last address mentioned in

the papers last served by BRANNER DONOVAN ROSENWALD & GILLESPIE

.....*John A. Ryan*.....

Sworn to before me this

3 day of Nov. , 1975 .

Eugene Kane
EUGENE KANE
Notary Public State of New York
No. 24-2026075
Qualified in Kings County
Commission Expires March 30, 1977

Service of ^{DWC} ~~three~~ ¹ ^Y copies of the within
is admitted this 3rd day of November 1975

Donna Vandermark
Secretary to
Stephen D. Gardner